Supreme Court, U.S.
FILED

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No.

In The
SUPREME COURT OF THE UNITED STATES

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JAMES POUILLON,
*Petitioner,*

v.

PEOPLE OF THE STATE OF MICHIGAN,
*Respondent.*

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On Petition for a Writ of Certiorari to the
Supreme Court for the State of Michigan

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# PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

This is a criminal case involving the First Amendment's protection for political and religious issues. On September 5, 2000, the Shiawassee County Prosecutor's Office charged the Petitioner, James Pouillon, with misdemeanor stalking for allegedly violating the Michigan Stalking Statute (MCL § 750.411h(1)(d)) in June and July of 2000, because of statements made to an officer, shareholder and sales manager of Young Oldsmobile Cadillac (Lori Rowlison) while protesting abortion at her place of business.

Petitioner presents the following questions:

I. Whether the criminal charge of Stalking should have been dismissed or a not-guilty verdict issued by the Trial Court, because James Pouillon's speech was "constitutionally protected activity" within the meaning and exception of the First Amendment exception to the Michigan Stalking Statute.

II. Whether the Michigan Stalking Statute violates the Free Speech and Due Process Clauses of the United States Constitutions, either on its face or as applied to Petitioner, in that the statute is substantially vague and overbroad.

## PARTIES TO THE PROCEEDING

All parties to the proceedings in the Michigan Supreme Court and all lower courts are listed in the caption of the Petition.

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## PETITION FOR WRIT OF CERTIORARI

Petitioner James Pouillon respectfully petitions this Honorable Court for a writ of certiorari to review the order of the Michigan Supreme Court that affirmed the decision and judgment of the 66th Judicial District Court of the State of Michigan, which held that James Pouillon's political and religious anti-abortion speech in the proximity of a commercial establishment was not "constitutionally protected activity" as excluded from the Michigan Stalking Statute.

## OPINIONS BELOW

The unpublished Order of the Michigan Supreme Court, dated June 30, 2003, denying application for leave to appeal appears as Appendix A hereto. The unpublished Order of the Michigan Court of Appeals, dated December 11, 2002, denying application for leave to appeal appears as Appendix B. The unpublished Order of the 35th Circuit Court of the State of Michigan, dated June 27, 2002, affirming Petitioner's conviction on appeal appears as Appendix C. The verbal Order of the 66th Judicial District Court of the State of Michigan, on November 21, 2000, denying Petitioner's motion to dismiss appears in the transcript of the November 21, 2000 hearing, which appears as Appendix F. *See* Appendix ("App.") at F12.

## STATEMENT OF JURISDICTION

On September 5, 2000, the Shiawassee County Prosecutor's Office charged the Petitioner, James Pouillon, in the 66th Judicial District Court of the State of Michigan with misdemeanor stalking for allegedly violating the Michigan Stalking Statute (MICH. COMP. LAWS §

750.411h(1)(d)) in June and July of 2000. In pretrial motions, on November 21, 2000, the trial court denied Petitioner's motion to dismiss based on the First Amendment issues raised by Petitioner. A bench trial was conducted on November 30, 2000, after which District Judge Ward Clarkson found the Petitioner guilty of stalking under Michigan's Stalking Statute.

Petitioner then filed a timely Claim of Appeal on or about December 21, 2000 with the 35th Circuit Court for the State of Michigan. The 35th Circuit Court entered its written Order on June 27, 2002. Appendix C. Petitioner filed a timely Application for Leave to Appeal with the Court of Appeals of the State of Michigan on July 18, 2002. The Michigan Court of Appeals entered an order denying the application for leave to appeal on December 11, 2002. Appendix B. Petitioner filed a timely Application for Leave to Appeal with the Supreme Court of the State of Michigan on December 21, 2002. The Michigan Supreme Court entered an order denying the application for leave to appeal on June 30, 2003. Appendix A. The jurisdiction of this court is properly invoked pursuant to 28 U.S.C. §1257.

## CONSTITUTIONAL AND STATUTORY PROVISIONS

UNITED STATES CONST., Amend. I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

UNITED STATES CONST., Amend. XIV:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall.... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

MICH. COMP. LAWS § 750.411h(1)(d):

> ["Stalking" is defined as] a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

## STATEMENT OF THE CASE

A. Factual History.[1]

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[1] On review of an appeal implicating First Amendment rights, the Court "conduct[s] an independent examination of the record as a whole, without deference to the trial court." *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston,* 515 U.S. 557, 567 (1995). This is so "because the reaches of the First Amendment are ultimately defined by the facts it is held to embrace, and [this Court] must decide for [itself] whether a given course of conduct fails on the near or far side of the line of constitutional protections." *Id.*; *see also Bose Corp. v. Consumers Union of United States, Inc.,* 466 U.S. 485, 499 (1984) (in case raising First Amendment issues appellate court must make an independent

Petitioner James Pouillon, for the six years prior to the arrest and conviction that gave rise to this case, protested near Young Oldsmobile Cadillac in Caledonia Township, Shiawassee County, Michigan, (Trial Transcript ("T.T."), p. 12; App. E29) The complaining witness and alleged victim of the stalking activity, Lori Rowlison, was the sales manager of Young Oldsmobile Cadillac as well as a stockholder and Secretary of the corporation. (T.T., p. 37; App. E6). Rowlison testified that Young Oldsmobile had sued Petitioner five or six years prior to this incident, because Petitioner began protesting at Young Oldsmobile over signs they put up for George Geddis, a judicial candidate, and Damion Frazier, a political candidate. (T.T., p. 35-36; App. E5) On two previous occasions (August 1998 and July 2000), Rowlison had obtained Personal Protection Orders (PPO) against James Pouillon through the 35th Circuit Court (T.T., p. 13; App. E2) The most recent PPO had been issued on July 17, 2000 by the 35th Circuit Court on an *ex parte* basis. Defendant then filed a Motion to Set Aside Personal Protection Order, which was denied by the 35th Circuit Court. On September 14, 2000, Defendant appealed the case to the Michigan Court of Appeals, which dismissed the appeal as moot because the PPO had expired.

Rowlison admitted that during the six year-protest period prior to his arrest, Petitioner has probably hurt her business. (T.T., p. 37; App. E7) Rowlison was asked about the times that Petitioner had injunctions or restraining orders against him and could not come out to Young Oldsmobile, and she admitted that it was better for business by saying, "Well, I'm

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examination of the whole record to ensure lower court decisions do not infringe free speech).

sure it didn't hurt, yeah." (T.T., p. 38; App. E8) However, Rowlison denied that the Stalking charge and restraining order were just attempts to keep Petitioner away from her business, and she said "No, I'm more concerned about my family." (T.T., p. 39; App. E8) However, Rowlison admitted that most employees and officers of the corporation did not want Petitioner out there, and she called him "a nuisance." (T.T., p. 52; App. E12) She also admitted that during the time period of July 2000, there were complaints about Petitioner to police dispatch almost every day. (T.T., p. 52; App. E12)

Rowlison testified at Petitioner's non-jury trial that Petitioner came to a location across the street from Young Oldsmobile Cadillac in June of 2000, at a time when she was about seven months pregnant. (T.T., p. 13; App. E2-E3) During this time period Petitioner would make statements such as "Is that a baby, or is that a bomb?" (T.T., p. 13; App. E3) Rowlison testified that Petitioner would be located across M-21 "on the east side of Ponderosa... out by the street corner." (T.T., p. 14; App. E3) Rowlison testified that in June and July, Petitioner made the statement "Is that a baby or a bomb" more than 20 times. (T.T., p. 16; App. E10) Rowlison testified that Petitioner also said "You better watch out, God will drop a bomb on you." (T.T., p. 16; App. E11) She further testified that Petitioner would also make comments and statements to her cousin, Tony Young, such as "Money can't buy you—money can't buy you this," and he would yell to other people, "Liar, liar," and similar comments. (T.T., p. 19; App. E11-E12)

Rowlison testified that these statements made by Petitioner made her feel "scared to death," "nervous all the time," frightened, intimidated, and harassed. (T.T., pp. 19-

20; App. E52) Rowlison also said she suffered emotional distress. (T.T., p. 20; App. E52) Rowlison further described the emotional distress she allegedly suffered, stating, "You know, afraid to go outside, you know, while he's there, and at night, I'm afraid to stay at the house by myself. I have to watch places before I go to them. I have to, you know, be in fear that something is going to happen." (T.T., p. 27; App. E52) However, when questioned about her alleged emotional distress, Rowlison testified that the only medical professional she told about the alleged distress was her obstetrician. She stated her "blood pressure was raised, was up a little bit one day, and he asked what was going on, and I told him about it." (T.T., p. 44, 47; App. E10) She testified that she has never seen any psychiatrists, psychologists or counselors about her alleged emotional distress, and she had no documented evidence that she actually suffered any emotional distress. (T.T., p. 44)

Under cross-examination, Rowlison admitted that when she hears phrases like "drop a bomb," it means "something that will shock you." She agreed that it meant "a surprise, something you didn't expect." (T.T., p. 28) Additionally, Rowlison admitted that about three years earlier she had testified under oath in Circuit Court at a PPO hearing that she once found a package on her porch and thought for a moment that it was a bomb left by Petitioner. (T.T., p. 30-32) She felt "silly" when she opened the box and found it contained teacups that someone had left for her. (T.T., p. 32)

Rowlison claimed that she had forgotten about the box incident when she made the complaints to the police about Petitioner's statements in June and July of 2000. She said "until then, I didn't have a clue what he was talking about." (T.T., p. 30) Rowlison said "after they had... questioned

him. Then I realized what he was talking about." (T.T., p. 33) Rowlison agreed that she then believed that Petitioner was making fun of her about the "bomb" that turned out to be only teacups. (T.T., p. 33) However, she testified that she still pursued the PPO and the criminal stalking charge even after she realized he was making fun of her about the "bomb" incident. (T.T., p. 33)

Rowlison admitted that (1) Petitioner had never come to her home; (2) Petitioner had never sent her any mail; and (3) Petitioner had never called her on the phone. (T.T., p. 39) She again agreed that she thought Petitioner was making fun of her, and that his statements were not really a threat to injure or kill her. (T.T., p. 43)

After additional questioning, Rowlison admitted that she was heard laughing on an audio tape of Petitioner's shouting that was entered into evidence. (T.T., p. 36-36; App. E7) She also admitted that she was able to conduct business to some extent, though not fully. (T.T., p. 36; App. E7)

Rowlison also admitted that Petitioner was standing across highway M-21 when these statement were made, and M-21 has four lanes of traffic and a turn lane. She estimated that Petitioner was probably standing a distance equivalent to eight lanes of traffic, probably several hundred feet away. (T.T., p. 40-41; App. E7) She admitted that Young Oldsmobile Cadillac had an outdoor intercom system that is fairly loud, and that there was additional noise from the traffic on M-21. (T.T., p. 41) She also acknowledged that Petitioner has yelled at and directed statements to many other people across from Young Oldsmobile Cadillac, including other employees of the corporation. (T.T., p. 42-43; App. E8)

The State's second witness was Michael Jay Zerka, an employee of Young Oldsmobile Cadillac. (T.T., p. 58; App. E15) Mr. Zerka testified that he heard Petitioner make the statement toward Rowlison sometime in June or July 2000, "Is that a bomb, or is that a baby?" (T.T., p. 60; App. E16) He testified that Rowlison was visibly upset after Petitioner made the statement, and that he called the police. (T.T., p. 60-61; App. E16-E17) Mr. Zerka testified that he has heard Petitioner yell and make statements from that location for four years. He also testified that he has heard him shout "Liar, Liar" about "a million times," and that he just ignores him as much as he possibly can. (T.T., p. 62; App. E18)

The State's third witness was Police Trooper Hector Llerena, who responded to a complaint about Petitioner at Young Oldsmobile Cadillac on June 29, 2000. (T.T., p. 64-65; App. E18-E19) Llerena later spoke to Petitioner and asked him why he chose that location to protest, and Petitioner informed him of his anti-abortion crusade and how Young Oldsmobile had previously posted political signs in front of its establishment. (T.T., p. 67-68; App. E20) Llerena asked Petitioner about the statement "Is that a baby or it that a bomb?" Petitioner "stated that Lori Rowlison had lied under oath in front of the Judge claiming that Mr. Pouillon had placed a bomb underneath her porch at her house, and that's how the bomb issue came up," Llerena testified. (T.T., p. 68-69; App. E21)

The State's final witness was Sheriff's Deputy Stacy Shepard, who responded to a complaint about Petitioner at Young Oldsmobile Cadillac on July 15, 2000. (T.T., p. 72-73; App. E22-E23). Later that day, Shepard was able to speak to Petitioner, and Petitioner stated that Rowlison had lied under oath, (T.T., p. 78; App. E26), and "that she had

blamed him for a package on her doorstep and claimed that it was a bomb." (T.T., p. 79; App. E27) Petitioner told Shepard that the reason he was there was to "promote the anti-abortion campaign." (T.T., p. 78; App. E27) Shepard returned to Young Oldsmobile to talk to Rowlison, and Shepard confirmed that Rowlison agreed that it had happened, that she thought it was a bomb, and she had testified to that in Court. (T.T., p. 79; App. E27)

Petitioner was the only witness to testify on his behalf. He stated that in 1994 he saw political signs in front of Young Oldsmobile Cadillac that supported two candidates that he considered pro-abortion candidates. Petitioner said he went to the dealership and spoke to an employee of Young Oldsmobile, objecting to the signs and stating that he was offended that they used their business to publicly endorse pro-choice candidates. (T.T., p. 86-88; App. E29) Petitioner testified that he did so "because they profess to be Christians, and I'm a Christian. And I asked them... since I also work for General Motors... if they would take the signs down." Petitioner was told they would think about it. (T.T., p. 88; App. E29-30) Petitioner said he came back about an hour later to learn their answer; the signs were still up, and the employee told him to "get the hell out of here." (T.T., p. 88; App. E30). Petitioner said he left, went and got one of his signs and started picketing. (T.T., p. 88-89; App. E31) Petitioner stated he first starting picketing on the same side of the street as Young Oldsmobile, but later moved across the street because "It's safer for me to be there.... so I don't get physically abused by Young Oldsmobile Cadillac dealership." (T.T., p. 90; App. E32) Petitioner stated he was previously assaulted and battered by their sprinkler system, and that they would verbally abuse him and his family. (T.T., p. 91; App. E32).

As to his actions in June and July 2000, Petitioner testified that at that time he was "specifically, picketing against Judge Clatterbaugh" at that location because in his words "he was up for re-election, and he's a baby killing Judge, in my opinion." (T.T., p. 93; App. E34) Asked why he made the statements to Lori Rowlison, he said

> Well, she accused me, in Circuit Court, of placing a bomb on her porch of her house, and I never did. So, I just – it's just a fair question. I believe it's a legitimate question to ask her if that's a baby, or it that's a bomb.

(T.T., p. 93; App. E34) Petitioner further stated that he believed God did drop a bomb on her and her dealership. He testified:

> Well, I believe that since this happened on a Saturday, prior to this, just before this happening, I believe her and the dealership and the lawyers got together and plotted – plotted against me, conspired to come up with this scheme about me stalking her.... But without them knowing that the Friday before that, two days just before that, without their prior knowledge, the Federal Judge in Kalamazoo, Michigan, just made a ruling that the Michigan Stalking Law is unconstitutional because it's being fairly misused to stop people like me from expressing – using their freedom of speech.

(T.T., p. 94; App. E34-E35)

When Petitioner was asked if he was talking about a literal bomb, he testified, "No, something like this right here.

He dropped a bomb on their whole case." Petitioner stated that he believes "because of this Federal Judge's ruling in Kalamazoo, Michigan, it has just blown this case all apart." (T.T., p. 94-95; App. E35).

B. Proceedings in The Trial Court.

Petitioner was charged by the Shiawassee County Prosecutor with violating the Michigan Stalking Statute (MCL § 750.411h(1)(d)) in June and July of 2000 for making the above-referenced statements to Rowlison. Petitioner moved to dismiss the complaint on two grounds: (1) That his speech was constitutionally protected activity within the meaning of and First Amendment exception to the Michigan Stalking Statute; and (2) That the Michigan Stalking Statute violated the Free Speech Clauses and the Due Process Clauses of the United States and Michigan Constitutions, either on its face or as applied to his conduct, in that the statute was impermissibly vague and overbroad. On November 21, 2000, the court held a hearing on the motion and denied the motion from the bench, and the case proceeded to trial. *See* App. F. On November 30, 2000, a bench trial was had, and the trial judge found Petitioner guilty of stalking. App. E51. Petitioner was sentenced to five years' probation and ordered to spend thirty days of said probation in the county jail. App. E51-52. He was also ordered to stay away from Rowlison, and not to protest at Young Oldsmobile Cadillac at any time when Rowlison was present, effectively precluding Petitioner from engaging in his political and religious protest during business hours. *Id.*

C. Proceedings in the Appellate Courts.

On December 21, 2000, Petitioner filed a Claim of

Appeal to the 35th Circuit Court. On June 24, 2002, oral arguments were held before the Circuit Court, and the Court denied the appeal and affirmed the conviction. App. D. The Order Affirming Petitioner's Conviction on Appeal was executed and entered by the 35th Circuit Court on June 27, 2002. App. C. The Court of Appeals denied leave to appeal on December 11, 2002, App. B, and Petitioner made application for leave to appeal to the Michigan Supreme Court. The Michigan Supreme Court entered an order denying the application for leave to appeal on June 30, 2003. App. A.

## REASONS FOR GRANTING THE WRIT

### I. CERTIORARI SHOULD BE GRANTED SO THAT THE COURT MAY ADDRESS THE IMPORTANT CONSTITUTIONAL ISSUE WHETHER A STATE STALKING STATUTE MAY BE EMPLOYED TO CRIMINALIZE POLITICAL AND RELIGIOUS SPEECH THAT IS OTHERWISE PROTECTED BY THE FIRST AMENDMENT.

The Michigan legislature adopted the Michigan Stalking Statute in 1993, creating a new crime of "stalking," a misdemeanor. "Stalking" is defined as:

> a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

MICH. COMP. LAWS § 750.411h(1)(d). This definition

requires proof of three elements: (1) a willful course of conduct involving repeated or continuing harassment of another individual; (2) which conduct would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested; and (3) resulting in the conduct actually causing the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested. *See People v. Kieronski,* 542 N.W.2d 339, 343-44 (Mich. Ct.App. 1996).

The statute defines "harassment" as:

> conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact, that would cause a reasonable individual to suffer emotional distress. *Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.*

MICH. COMP. LAWS § 750.411h(1)(c)(emphasis added).

The Michigan Stalking Statute further defines "unconsented contact" as:

> any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following:
>
> (i) Following or *appearing within the sight of that individual.*
> (ii) Approaching or confronting that individual in a

public place or on private property.
(iii) *Appearing at that individual's workplace* or residence.
(iv) Entering onto or remaining on property owned, leased, or occupied by that individual.
(v) Contacting that individual by telephone.
(vi) Sending mail or electronic communications to that individual.
(vii) Placing an object on, or delivering an object to, property owned, leased, or occupied by that individual.

MICH. COMP. LAWS § 750.411h(1)(e) (emphases added).

Petitioner's political and religious speech was not conduct that could reasonably be considered "stalking" under the Michigan statute. Defendant merely stationed himself across a public highway from a business establishment and made verbal comments expressing his anti-abortion views to many individuals associated with the business from some 300 feet away. Petitioner did not follow the complaining witness, did not approach or confront her in a public place or on private property, did not contact her by phone, did not send mail or electronic communications to her, and did not place or deliver any objects to her. There had been little if any change in the constitutionally protected speech by Petitioner at Young Oldsmobile Cadillac in the several years before his arrest.

The right to non-violently picket, protest and boycott against businesses is well-established. *See, e.g., NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982). The Michigan Court of Appeals cited *Claiborne Hardware* in Petitioner's previous civil matter, App. G6, in which the

State's own Court of Appeals suggested that Petitioner's conduct outside Young Oldsmobile Cadillac was "constitutionally protected." In its October 14, 1997, order vacating a preliminary injunction entered against Petitioner's activity, the Court of Appeals stated:

> *It is clear that a boycott, at least to the extent that it is supported by speeches and nonviolent picketing, is lawful activity entitled to constitutional protections. NAACP v Claiborne Hardware Co,* 458 US 886, 907; 102 S Ct 3409; 73 L Ed 2d 1215 (1982). This is so even if the purpose of the picketing is to induce customers not to patronize the business. *Id.* at 909.

*Young Oldsmobile Cadillac v. Pouillon*, Michigan Court of Appeals No. 190407, October 14, 1997, at p. 4; App. G6 (emphasis added).

It is also undisputed that Petitioner's religious and political speech receive the highest level of protection by the First Amendment. *Widmar v. Vincent,* 454 U.S. 263, 269 (1981) (citing *Heffron v. International Society for Krishna Consciousness, Inc.,* 452 U.S. 640 (1981); *Niemotko v. Maryland,* 340 U.S. 268 (1951); *Saia v. New York,* 334 U.S. 558 (1948); *Board of Education of Westside Community Schools v. Mergens,* 496 U.S. 226 (1990). "[A] State may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions." *Cantwell v. Connecticut,* 310 U.S. 296, 308 (1940). Thus, the State may only suppress protected speech in a traditional public forum when they are "fighting words," which are words which cause a "clear and present danger of riot, disorder, interference with traffic upon the public street, or other immediate threat to public safety, peace or order." *Id.,*

at 308.

In this case, the defendant's religious and political speech did not result in a clear and present danger of riot, disorder, interference with traffic, or immediate threat to public safety, peace or order. He was merely communicating his religiously motivated opposition to abortion to passersby, customers and employees of a car dealership which he believes supports political candidates who favor abortion, and was also making fun of Rowlison's previous testimony against him in court in a related matter. While his speech was certainly pejorative and, to the employees of Young Oldsmobile Cadillac, offensive, it was similar in tenor to phrases this Court has declared protected many times over. *See, e.g., Brandenburg v. Ohio*, 395 U.S. 444, 446, n.1 (1969) (statements at Ku Klux Klan rally such as "This is what we are going to do to the n– s" and "Bury the n— s"); *Cohen v. California*, 403 U.S. 15 (1971) ("F— the draft"); *Hess v. Indiana*, 414 U.S. 105, 107 (1973) ("We'll take the f—ing street later"). As this Court has frequently observed,

> [A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.

*Terminiello v. Chicago*, 337 U.S. 1, 4 (1949); *Texas v. Johnson*, 491 U.S. 397, 408 (1989). Consequently, freedom of speech, though not absolute, is nevertheless protected

against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that arises far above public inconvenience, annoyance, or unrest. *Termineillo*, 337 U.S. at 4, citing *Chaplinsky v. New Hampshire,* 315 U.S. 568, at 571-572 (1942). *See Bridges v. California,* 314 U.S. 252, 262 (1941); *Craig v. Harney,* 331 U.S. 367, 373 (1947).

> Words are often chosen as much for their emotive as their cognitive force. We cannot sanction the view that the Constitution, while solicitous of the cognitive content of individual speech, has little or no regard for that emotive function which, practically speaking, may often be the more important element of the overall message sought to be communicated.

*Cohen,* 403 U.S. at 26. The speech in which Petitioner was engaging when he made the statements at issue was accordingly clearly protected by the First Amendment.

Further, the place where defendant engaged in the speech which the State of Michigan characterized as "stalking" was a traditional public forum:

> [W]herever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.... The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute but relative, and must be exercised in subordination to the general comfort and

> convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied.

*Hague v. Committee for Industrial Organization,* 307 U.S. 496, 515-516 (1939) (plurality opinion). Streets, sidewalks, and parks represent "quintessential public forums." *Perry Education Association v. Perry Local Educators' Association,* 460 U.S. 37, 45 (1983). Hence,

> One who is rightfully on a street open to the public "carries with him there as elsewhere the constitutional right to express his views in an orderly fashion. This right extends to the communication of ideas by handbills and literature as well as by the spoken word."

*Members of City Council of Los Angeles v. Taxpayers for Vincent,* 466 U.S. 789, 810 (1984), quoting *Jamison v. Texas,* 318 U.S. 413, 416 (1943) (additional citation omitted). Within public fora such as the public right-of-way along highway M-21 in Caledonia Township, Michigan, "the government's ability to permissibly restrict expressive conduct is very limited." *United States v. Grace,* 461 U.S. 171, 177 (1983) (citations omitted). In fact, "Regulation of speech activity on governmental property that has been traditionally open to the public for expressive activity, such as public streets and parks, is examined under strict scrutiny." *United States v. Kokinda,* 497 U.S. 720, at 726 (1990). Under strict scrutiny, the restrictions placed on the defendant's speech "will be upheld only if narrowly drawn to achieve a compelling interest." *Grace,* 461 U.S. at 177; *People v. Taravella,* 133 Mich.App. 515, 350 N.W.2d 780, 783 (1984). Enforcing an atmosphere of quietude in the

public spaces outside a business has never been held a permissible interest of the State. "[A] State may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions." *Cantwell v. Connecticut,* 310 U.S. at 308.

It is not enough that the words Petitioner spoke might have stirred emotions or upset some citizens, even women and children. The vitality of civil and political institutions in our society depends on free discussion. As Chief Justice Hughes wrote in *De Jonge v. Oregon,* 299 U.S. 353, 365 (1937), it is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effected. The right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that sets the American political system apart from totalitarian regimes. Accordingly, Petitioner respectfully requests that the Court grant certiorari to address whether his conviction for "stalking" should have been set aside or vacated because his non-violent protest activity was constitutionally protected speech which did not constitute "harassment" or "stalking" within the definitions of the Michigan Stalking Statute.

## II. CERTIORARI SHOULD BE GRANTED TO SO THAT THE COURT MAY ADDRESS WHETHER THE MICHIGAN STALKING STATUTE IS IMPERMISSIBLY VAGUE AND OVERBROAD IN VIOLATION OF THE FREE SPEECH AND DUE PROCESS CLAUSES, EITHER ON ITS FACE OR AS APPLIED TO PETITIONER.

In a traditional public forum, such as the public right-of-way along highway M-21, speech activities may be affected by incidental regulations. However,

> [Such regulations] must be carefully drawn or authoritatively construed to punish only unprotected speech and not susceptible of application to protected expression. Because First Amendment freedoms need breathing space to survive, government may regulate in the area *only* with narrow specificity.

*Gooding v. Wilson,* 405 U.S. 518, 522 (1972) (emphasis added). *See also Keyishian v. Board of Regents of Univ. of New York,* 385 U.S. 589, 603-04 (1967).

Petitioner's prosecution and conviction under the Michigan Stalking Statute did not meet this standard, insofar as the statute criminalizes pure speech within a public right-of-way. The Michigan Stalking Statute proscribes on its face any speech in a public place which may cause the offended party "to feel harassed." Further, the Statute's restriction on speech is made in vague terms not susceptible to precise meaning as understood by ordinary individuals.

A. The Michigan Stalking Statute Is Substantially Overbroad Either on Its Face or as Applied to Petitioner, as It Criminalizes Political and Religious Expression Protected by the First Amendment.

It is an axiom of First Amendment jurisprudence that laws impinging upon expressive activity protected by the First Amendment must be narrowly drawn so as not to sweep beyond the particular evil to be controlled. *Zwickler v. Koota,* 389 U.S. 241, 249 (1967), citing *NAACP v. Alabama,* 377 U.S. 288, 307 (1964). A statute or ordinance is overbroad if its enforcement would include within its sweep

activity protected by the First Amendment. It does not matter that some activity regulated by the ordinance could be validly proscribed. Nor does it matter whether the parties before the court are accused of acts that could be regulated without affronting the Constitution. *See, e.g., NAACP v. Button,* 371 U.S. 415, 431 (1963). The focus of the overbreadth doctrine is not on the individual actor before the Court but on others who may forego protected activity rather than run afoul of the statute's proscriptions. *Village of Schaumberg v. Citizens for a Better Environment,* 444 U.S. 620, 633-34 (1980).

This Court has been particularly hostile to statutes or ordinances that seek to burden the advocacy of matters of public concern and whose application tend not to be viewpoint neutral. *See Broadrick v. Oklahoma,* 413 U.S. 601, 614 (1973); Note, *The First Amendment Overbreadth Doctrine,* 83 HARV. L.REV. 844, 920 (1970). Where a statute is likely to be used in a selective manner to punish dissenters, the Court is more likely to invoke the overbreadth doctrine and invalidate the law. *See Smith v. Goguen,* 415 U.S. 566 (1974); Nowak & Rotunda, CONSTITUTIONAL LAW, § 16.8, p. 947 (4th ed. 1988).

The Supreme Court developed the overbreadth doctrine during the late 1950s and early 1960s. At that time, legislatures passed statutes to curtail the activities of unpopular political and civil rights activists. *See, e.g., NAACP v. Button,* 371 U.S. 415 (invalidating statute forbidding lawyers from accepting compensation for legal services from non-parties); *United States v. Robel,* 389 U.S. 258 (1967) (invalidating as overbroad statute that prohibited members of communist organizations from working in defense facilities); and *Aptheker v. Secretary of State,* 378

U.S. 500 (1964) (invalidating statute that prohibited use of passport by members of communist organizations that failed to register with the State Department). Both the civil rights and communist political movements included law-abiding and non-law-abiding elements. Often, statutes ostensibly designed to attack the criminal element within these political movements were used to intimidate others who sought peaceful change through lawful means.

The contemporary analog in the abortion protest movement is self-evident. *See generally* Lynn D. Wardle, *The Quandry of Pro-Life Speech: A Lesson from the Abolitionists*, 62 ALB. L. REV. 853 (1999). The overbreadth doctrine was designed to address the concern that citizens might forego exercising protected activity for fear that a vague or overbroad statute would be used against them, or that they would escape its enforcement only at the expense and risk of litigation. *See Button,* 371 U.S. at 423-33. This concern is most acute where vague or overbroad statutes can be selectively enforced by government so as to target and suppress specific groups and ideas. *Kolender v. Lawson,* 461 U.S. 352, 357 (1983) (holding that most important aspect of void-for-vagueness doctrine is that it prohibits arbitrary and selective enforcement on constitutionally suspect bases); *Goguen,* 415 U.S. at 575 (holding statute unconstitutional because it failed to provide clear standard for criminality and thereby enabled police and judicial fact-finder to assess lawfulness of expressive conduct according to personal preferences). Members of this Court have noted that anti-abortion political and religious speech often receives less protection than other forms of speech. *See, e.g, Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747, 814 (1986) (O'Connor, J., dissenting) ("no legal rule or doctrine is safe from ad hoc nullification by this Court

when an occasion for its application arises in a case involving state regulation of abortion"); *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 785 (1994) (Scalia, J., concurring in judgment in part and dissenting in part) ("Today the ad hoc nullification machine claims its latest, greatest, and most surprising victim: the First Amendment."); *Hill v. Colorado*, 530 U.S. 703, 741-42 (2000) (Scalia, J., dissenting) ("What is before us, after all, is a speech regulation directed against the opponents of abortion, and it therefore enjoys the benefit of the "ad hoc nullification machine" that the Court has set in motion to push aside whatever doctrines of constitutional law stand in the way of that highly favored practice.").

Application of the overbreadth doctrine is most appropriate where a statute or ordinance provides no bright line between constitutionally protected and statutorily proscribed activity. More succinctly stated, the line between permitted and non-permitted activity must be brightest where what appears immediately upon the permitted side of the line is activity protected under the First Amendment. This is particularly true where imprisonment and criminal monetary penalties are at stake. In this case, Petitioner is still on probation for two more years, and had to spend thirty days in the county jail for his speech.

The overbreadth of the Michigan Stalking Statute is substantial. Its prohibition on repeated "unconsented conduct" directed at another by, *inter alia*, "appearing within sight" of the individual or at her workplace, could be applied, as it was in this case, to prevent the exercise of First Amendment rights. The overbreadth doctrine forbids governmental regulations which sweep protected speech as well as unprotected speech into their net. *Members of City*

*Council v. Taxpayers for Vincent,* 466 U.S. at 800; *Zwickler v. Koota,* 389 U.S. 241, 250 (1967); *Erznoznik v. Jacksonville,* 422 U.S. 205, 216 (1975) ("This Court has long recognized that a demonstrably overbroad statute or ordinance may deter the legitimate exercise of First Amendment rights."). The net cast by The Michigan Stalking Statute is so large that it catches all possible offenders, even as in the present case, individuals engaged in protected free speech activities. Under the overbreadth doctrine, any statute or ordinance is void if it "offends the constitutional principle that a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedom". *Zwickler,* 389 U.S. at 250 (internal quotations omitted).

Stalking statutes in Texas and Colorado have been overturned on similar constitutional grounds. *See Long v. State*, 931 S.W.2d 285 (Tex. Ct.Crim.App. 1996); *People v. Norman*, 703 P.2d 1261 (Colo. 1985). In 1998, the Minnesota Supreme Court struck down as facially unconstitutional the Minnesota Stalking Statute (MINN. STAT. § 609.749), which had similar language defining "harassment." *See People v. Machholz,* 574 N.W.2d 415 (Minn. 1998). The court was most concerned about § 2(7) of the statute, which prohibited any person from engaging "in any other harassing conduct that interferes with another person or intrudes on the person's privacy or liberty." The court struck the Minnesota statute despite that it also had a savings clause similar to the Michigan Stalking Statute that stated that "conduct is not a crime under this section if it is... authorized, required, or protected by state or federal law or the state or federal constitution." *Id.* at 418.

In this case, Petitioner was simply exercising his First Amendment rights to free speech on the topic of abortion, and the stalking charges were merely an attempt by the shareholder and officer of the business establishment he targeted to stop his ongoing protest of their public support of abortion rights candidates. Petitioner therefore prays that the Court grant certiorari to address whether his conviction should be vacated because the Michigan Stalking Statute is unconstitutionally overbroad, either on its face or as applied to Defendant's conduct.

### B. The Michigan Stalking Statute Falls Far Short of the Specificity Required By the Due Process Clause of the Fourteenth Amendment.

Closely related to the overbreadth doctrine is the void-for-vagueness doctrine.[2] Statutory vagueness implicates rights secured under the Due Process Clause of the Fourteenth Amendment. "A basic principle of due process is that a criminal statute is void for vagueness if its prohibitions are not clearly defined." *People v. Gagnon,* 129 Mich.App. 678, 341 N.W.2d 867, 869 (1983). Any ordinance that lacks "ascertainable standards of guilt" is unconstitutionally vague and therefore violates the Fourteenth Amendment. *Winters v. New York,* 333 U.S. 507, 515 (1948). While the vagueness

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[2] The concepts of vagueness and overbreadth are distinct although frequently overlapping. A statute can be either vague or overbroad or both. A statute can be overbroad because it is vague. Overbreadth is often found in combination with vagueness. *See, e.g., Houston v. Hill,* 482 U.S. 451 (1987). Both overbreadth and vagueness doctrines attack the facial validity of a law. Both demand clarity and specificity in drafting legislation.

doctrine applies to all criminal laws, not merely those that regulate expressive conduct or other constitutional rights, *Kolender,* 461 U.S. at 357, the Court has held that special clarity is demanded when First Amendment rights are involved. *Hoffman v. Flipside, Hoffman Estates,* 455 U.S. 489, 498 (1982) ("If, for example, the law interferes with the right of free speech or of association, a more stringent vagueness test should apply"); *Smith v. Goguen,* 415 U.S. at 573 ("Where a statute's literal scope... is capable of reaching expression sheltered by the First Amendment, the (vagueness) doctrine demands a greater degree of specificity than in other contexts"); *Grayned v. City of Rockford,* 408 U.S. 104, 108-10 (1972). In that case, the ordinary rule, which states that a statute should not be held unconstitutionally vague on its face unless it is vague in all of its possible applications, does not apply. *See Kolender,* 461 U.S. at 358-59.

A criminal statute may be challenged for vagueness on three grounds: (1) it does not provide fair notice of the conduct proscribed; (2) it confers on the trier of fact unstructured and unlimited discretion to determine whether an offense has been committed; and (3) its coverage is overbroad and impinges on First Amendment freedoms. *Grayned v. Rockford,* 408 U.S. at 108-09. The Michigan Stalking Statute is unconstitutionally vague is because the language in the statute fails to adequately inform the public of exactly what conduct is forbidden. It is phrased "in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." *Connally v. General Construction Co.,* 269 U.S. 385, 391 (1926); *see also People v. Downes*, 394 Mich 17, 228 N.W.2d 212 (1975). The Statute prohibits any person from engaging in "harassment," but it lists no objective standards

by which to gauge whether the language is "harassment." What is harassment to one person may not be to another. The Statute fails to inform the public what language will and will not be tolerated.

Moreover, the Michigan Stalking Statute is unconstitutionally vague because it creates "attendant dangers of arbitrary and discriminatory application." *Grayned,* 408 U.S. at 109; *see also Kolender,* 461 U.S. at 358. Those dangers certainly lurk here, where the statute is susceptible to application to anyone who speaks out in public in a manner that may, in the sole discretion of a sitting Judge or trier of fact, be deemed "harassment." In *Coates v. Cincinnati,* 402 U.S. 611 (1971), the Supreme Court held unconstitutionally vague an ordinance prohibiting conduct that may "annoy" people, "not in the sense that it requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all." 402 U.S. at 614. Moreover, the existence of the statute and the State's enforcement of the statute against citizens who are exercising their constitutional rights (such as James Pouillon) exacerbates the problem even further by empowering private citizens to intimidate protesters with whom they disagree by threatening complaints of marginal or dubious merit. *See, e.g., Slochower v. Board of Education,* 350 U.S. 551, 559 (1960) (noting that "the very essence of due process" is protection from "arbitrary action"). *See also Palmore v. Sidoti,* 466 U.S. 429 (1984) (state may not act on or give effect to private biases).

The unconstitutional vagueness of the Michigan Stalking Statute is obvious. It is highly unlikely that anyone of common intelligence who merely reads the statute would

arrive at a precise interpretation. As a result, persons desiring to exercise free speech rights in public forums of the State of Michigan are required to "steer [even farther away from]... the unlawful zone." *Grayned,* 408 U.S. at 109. Because the Statute is unconstitutionally vague, it has a chilling effect on persons, like Petitioner, who seek to lawfully exercise their constitutional right of free speech.

## CONCLUSION

For the reasons set forth hereinabove, Petitioner respectfully requests that this Honorable Court grant their Petition and issue a writ of certiorari to the Michigan Supreme Court to review the issues raised herein and to address whether the Michigan Stalking Statute should be declared unconstitutional on its face or as applied to Petitioner, and Petitioner's stalking conviction accordingly vacated.

Respectfully submitted,

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September 28, 2003

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ORDER
Entered: June 30, 2003

Michigan Supreme Court
Lansing, Michigan

122950

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v.

JAMES POUILLON,

Defendant-Appellant.

SC: 122950
COA: 242625
Shiawassee CC: 00-005900-AR
66th DC: 00-ST-1287

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On order of the Court, the application for leave to appeal the December 11, 2002 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

/S/ I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 30, 2003 Corbin R. Davis /s/

B1

Court of Appeals, State of Michigan

ORDER

People of MI v. James Pouillon

Docket No. 242625

LC No. 00-005900-AR

Richard Allen Griffin
Presiding Judge
Donald E. Holbrook, Jr.
Donald S. Owens
Judges

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The Court orders that the application for leave to appeal is DENIED for lack of merit in the grounds presented.

Richard Allen Griffin /s/
Presiding Judge

/S/ A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

Dec 11 2002
Date

Sandra Schultz Mengel /s/
Chief Clerk

C1

STATE OF MICHIGAN
IN THE 35TH CIRCUIT COURT FOR THE COUNTY OF SHIAWASSEE

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff/Appellee,<br><br>JAMES POUILLON,<br><br>Defendant/Appellant. | Circuit Court File #00-5900-AR<br>District Court File #00-ST-1287<br>Hon. Gerald Lostracco<br><br>ORDER AFFIRMING DEFENDANTS' CONVICTION ON APPEAL |

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|---|---|
| Randy O. Colbry, P33053<br>County Prosecutor<br>Surbeck Building, 2nd Floor<br>201 N. Shiawassee Street<br>Corunna, Michigan 48817<br>(989) 743-2372 | J. Kevin McKay, P44647<br>Attorney for Defendant/Appellant<br>217 N. Washington St., Suite 111<br>P.O. Box 1024<br>Owosso, Michigan 48867<br>(989) 723-3883 |

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ORDER AFFIRMING DEFENDANT'S
CONVICTION ON APPEAL

At a session of said Court held in the Courthouse,
in the City of Corruna, Shiawassee County,
Michigan, this 27th day of June, 2002

C2

PRESENT: THE HONORABLE GERALD LOSTRACCO

This cause having been brought to the Circuit Court on a Claim of Appeal, and hearing the parties arguments in open court and reviewing the file, from which it satisfactorily appears to this Court that Defendant's conviction for Stalking should be affirmed.

IT IS HEREBY ORDERED AND ADJUDGED that, for the reasons stated on the record on June 24, 2002, the 66th District Court's conviction of Defendant, James Pouillon, is affirmed.

Hon. Gerald Lostracco /s/
Circuit Judge

Approved as to Form:

J. Kevin McKay, P44647 /s/
Attorney for Defendant/Appellant

Graham G. Leach, P63013 /s/
Assistant Prosecutor

D1

STATE OF MICHIGAN
THIRTY-FIFTH CIRCUIT COURT
(SHIAWASSEE COUNTY)

PEOPLE OF THE STATE OF MICHIGAN

FILE NO. 00-5900-AR

vs

JAMES POUILLON,

Defendant

_____/

HEARING ON APPEAL FROM DISTRICT COURT
BEFORE THE HONORABLE GERALD D. LOSTRACCO,
CIRCUIT JUDGE

Corunna, Michigan - June 24, 2002

APPEARANCES:

For the People: MR. GRAHAM LEACH (P63013)
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For the Defendant: MR. J. KEVIN MCKAY (P44647)
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* * * *

## RECORD

THE COURT: Okay, we have File 00-5900,which is the People of the state of Michigan versus James Pouillon, and we have Mr. Pouillon here as Appellant, and his counsel, Mr. J. Kevin McKay; and Mr. Graham Leach representing the People, Appellee. In reading through the file it appears that this is an appeal from a District Court Prosecution - I should say Prosecution in District Court wherein Mr. Pouillon following a bench trial was found guilty of stalking, and that would be in violation of MCL - I'll cite the MCLS, 750.411 (H) (1) (D). So, Defendant has filed the appeal from that judgment of - of conviction and sentence and has filed a brief in support of claim of appeal and the People have filed the response and a response brief. I've had an opportunity to read through those and I think that - that's it as far as what has been presented and that's what I've read other than some of the authority cited. So, if Counsel are ready to proceed then you can go ahead, Mr. McKay.

MR. MCKAY: Thank you, your Honor. Your Honor, I'll just touch on the highlights of the brief. Basically, we have two arguments, Your Honor, that we're asking that the conviction be vacated and set aside. The first argument is that the stalking conviction to be set aside because the activity that Mr. Pouillon was prosecuted and found guilty for is constitutionally protected activity within the meaning and exception of the stalking statute. The second argument which I will address briefly as well, is that the stalking statute itself violates - violates the free speech clauses and the due process clauses of both the US and Michigan constitution,

either on their face or as applied to Mr. Pouillon's activity. The - I'd like to deal first with the - our first argument in this appeal. As the Court has indicated, there was a bench trial. Just briefly, before the bench trial there was a November 6th, 2000 we filed a Motion for Dismissal in front of Judge Clarkson. That motion was heard on, I believe, on the 21st of November 2000. Motion - motion was denied, the case then proceeded to non-jury trial on November 30th, 2000. We filed this Appeal then on December 21st, 2000. The - the first argument, Your Honor, is that - I won't go through the facts. I think we've set forth, both parties have set forth the facts as they believe them to be, and - and the transcripts been filed. But, the first is that, if you recall from reading the brief, the statute, the stalking statute sets forth what the elements of stalking are, which the Court is well familiar of, with in- goes in to defining harassment. And if you look at the definition of harassment, it says, "Conduct directed toward a victim includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress." Then it says, "Harassment does not include constitutional and protected activity or conduct that serves a legitimate purpose." I - I'm not quite sure what the legitimate purpose portion of that is, but clearly what we're arguing is that this is constitutionally protected and I think it's and either/or situation. If the conduct is constitutionally protected, then it's not harassment. Or, if it serves a legitimate purpose and I - I don't think there's been any case law recite - I haven't come across any that differentiates what the legitimate purpose is. But, that's an or and not an and. So, our argument is that as long as it's constitutionally protected it falls within the exception as not being harassment. So, our argument, Your Honor, starts out that it - certainly there are elements that the Trial Court found existed in - in the testimony and evidence that was presented at the non-jury trial. But, our main argument here is that it doesn't really matter

whether those elements were - were found if Mr. Pouillon's conduct falls within that exception to harassment. Because if it's not harassment, it's constitutionally protected activity, therefor, it's not harassment, and it cannot be stalking. So, I think the legislature - our first argument, I'm basically arguing in the alternative here. The first argument is that the legislature drafted the statute properly and it just wasn't a prop - applied properly by the District Court in that they - they left an exception for constitutional rights. They specifically put this exception in the statute to prevent someone's constitutional rights from being trampled on. So, that's, in a sense, my first argument and then the second argument I'll get to in a minute is basically saying that, okay, in the alternative that that's not the case then our argument is that the statute is not drafted properly and - or it's either applied improperly against him, and that's where we get into the due process and the con - the other constitutional arguments overbroad and vague. But, back to the - the exception -

THE COURT: Before you get to that, just on the facts, was there a single event that led to the Prosecution or that culminated in a prosecution?

MR. MCKAY: There was, I wouldn't say a single event. There was a time period, I think the - the victim testified between June - sometime between June and July there were numerous occasions when Mr. Pouillon presented himself across the street from Young Olds. And the brief goes into - basically, there were - the only thing and - and Mr. Leach wasn't - wasn't there for the trial, but he may have reviewed enough to know, the only thing that - that came out at trial that was - that was being used for stalking was verbal statements that Mr. Pouillon made from across the street. In - in other words, there was no following Mr. Rawlison-Young. He didn't follow her to go to her residence or call her on the phone or send her notes or anything. It's all conduct from across the street and the transcript should indicate - I'm trying to

see here if I had it in my facts - how many times she estimated that he was across there.

MR. LEACH: I believe it was thirty to forty times on fifteen to twenty occasions, is what she testified to.

THE COURT: I read that, but I was just wondering if factually, if - if there was, again, something that occurred out of all that that finally, as it is in the statement, finally, all right, that's it, you know, let's - let's go in and - and arrest the defendant.

MR. MCKAY: I - I think it was just the culmination of everything. I - I don't know what plays the PPO had in the whole process either - either. If you recall, Ms. Rawlison came in and we actually had a hearing. I think you denied the Exparte PPO against Mr. Pouillon but we actually had a hearing and basically, it was the same facts.

THE COURT: I remember issuing a PPO so was there an outstanding PPO at the time of these incidents?

MR. MCKAY: I believe the PPO came before the arrest on the warrant.

THE DEFENDANT: No.

(Conference between Defense Counsel and Defendant)

MR. MCKAY: I - I think she had obtained the PPO and then after that the Prosecutor's office issued charges, correct?

MR. LEACH: Although - -

MR. MCKAY: I don't remember the exact -

MR. LEACH: - - I'm not sure either, but it seems like if there was a PPO in base - in place, we would have issued the Aggravated Stalking because it would have been - -

MR. MCKAY: Oh, there was - -

MR. LEACH: - - in violation of the PPO.

MR. MCKAY: Yeah. There was no - there was no conduct after the PPO was in place. But, - -

MR. LEACH: Yeah, I don't - I don't believe it was in place

at the time.

THE COURT: All right.

MR. MCKAY: Your Honor, you're well familiar with - with the history here between Mr. Pouillon and - and Young Olds and even Ms. Rawlison. I would just point out that the verbal comments that were made, if you - if you look at the - when you're talking about pure speech, and in my brief I indicated fighting words, there's a discussion about fighting words, and I want to - I want to look at the *Cantwell versus Connecticut* case, it's cited on page thirteen of my brief, indicated, "A state may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions." And that's *Cantwell versus Connecticut*. Basically, they're saying that the only thing that the state can prohibit and protect if it's pure speech in a traditional public forum, which we have here, is fighting words. And they define fighting words in *Cantwell versus Connecticut* as, "Those words," and I continue to quote here, "which cause a clear and present danger of riot, disorder, interference with traffic upon a public street or other immediate threat to public safety, peace, or order." And here we have Mr. Pouillon's words some three hundred - anywhere from two to three hundred feet away being shouted across loud traffic. There was no - no immediate contact. There was no face-to-face contact with Ms. Rawlison or anybody else on these occasions. So, there was really no disorder or fear of inducing a riot or clear and present danger of a riot. So, if you look at the - the long line of cases talking about fighting words, I think it's clear that if Mr. Pouillon's conduct fit within the fighting words, then, of course, the state could - could prosecute and - and find him guilty if he - if he's committing fighting words, but here you have traditional public forum which the - the Court of Appeals has specifically stated he has the right to be there across the street. He's within the right of way and it's protected speech. So, there

was no obscenities, no vulgarities that were - that were shouted. There was basically a discussion that Mr. Pouillon had based on the fact that, if you recall, Ms. Rawlison had come into court on one of the P - I think the first PPO that she received. When she testified she indicated there was one day she came out on her porch, there was a box on her porch and she was in immediate fear that Mr. Pouillon had placed some bomb on her porch. Now. when - upon cross-examination and further development of that testimony, she indicated there was actually some teacups from her neighbor or something. So, that was - that was really the instigation for Mr. Pouillon asking her about - she was pregnant at the time - asking her, "Is that a baby or bomb?" Some of the comments that - that were testified to in this matter. So, clearly, there was a reason for Mr. Pouillon being there. He had a constitutional right to be there and his comments were not fighting words. So, my argument, Your Honor, which I think is consistent with the case law is, that - that it was constitutionally protected activity. It may not have been nice, it may not have been desired by Ms. - by Ms. Rawlison, but just because someone doesn't - doesn't like what's being said to them doesn't mean that they can prohibit someone from saying it. The - and I'd be happy to develop any of those areas that the Court might have questions on in that argument.

The next argument, Your Honor, is that in the alternative, and I would rather not, and I think the Court would rather not set aside a statute, but in the alternative, if the - if we're saying that that doesn't meet constitutionally protected activity as defined by the statute then something's wrong with the statute. If you look at the - my arguments on the Overbreadth Doctrine, and in that - in an Overbreadth Doctrine, it basically says that, "A statute or an ordinance is overboard if its enforcement would include within its sweep activity protected by the First Amendment. It does not matter that some activity regulated by the ordinance or statute could

be validly proscribed, nor does it matter that the parties presently before the court are accused of acts that could be regulated." So, in a sense, this is - this argument basically saying that - that on its face the stalking statute is unconstitutional because it's overbroad. And there, you don't necessarily look at what Mr. Pouillon did. You look at would this statute violate other people's constitutional rights even if Mr. Pouillon was - was validly convicted. So, that argument is one - one argument that the Court should consider. The other is vagueness. A statute is void for vagueness and that's closely related to the Overbreadth Doctrine, but that basically says, "The basic principle," and I'm quoting from page eighteen of my brief, which is a Gagnon case, *People versus Gagnon, 123 Mich App, 678*, it's a 1983 case. It says, "The basic principle of due process that a criminal statute is void for vagueness if its prohibitions are not clearly defined. Any ordinance that lacks ascertainable standards of guilt violates the Fourteenth Amendment is therefore unconstitutionally vague." And that, there in the brief, it's quoting from the *Winters versus New York*, United States Supreme Court case. But, the argument here, Your Honor, is that you talk about constitutionally protected activity, it doesn't really define what that is, neither does, I think the other words were legitimate - legitimate purpose, was the other. And there's really no - no ascertainable standards of guilt. Clearly, there are - there are a number of convictions across the state where - where people have actually stalked intended victims, but there you have situations where there are other instances - you have other facts that don't exist in this case, that being, you know, they follow the person around; they're contacting them at home, on the phone, mail, threatening to kill them, that type of thing which - which doesn't exists here. So, if you've got a situation where Mr. Pouillon is - is found guilty and all that - and all that stuff doesn't apply, then - then the real questions is does this statute really have ascertainable

standards of guilt?

So, our argument, in the alternative, Your Honor, first, it's that the - that the statute is fine and that the facts of this case Mr. Pouillon should - the conviction should be set aside because he was conducting himself in a constitutionally protected manner.

The second then is that in the alternative that the statute is unconstitutional and should be - should be - the conviction should be vacated on that basis.

If I - it went into - I went into a little more detail as to the vagueness. There are three, in brief, there are three at grounds that they could be vague. The one that - that I would point out, Your Honor, starts on page twenty and it's the second, number two reason when we're talking about vagueness, and that is that the statute's unconstitutionally vague because the ordinance creates attendant dangers of arbitrary and discriminaryapp - discriminatory application. In here that's what we have, is we have the risk and I think it's been done before, that against Mr. Pouillon, people in the community do not - do not want him out there spreading his message and they don't like his message or they don't like some of the things that he - the pictures that has and so they try, and a number of police agencies have tried to do anything they can to get him off the street. And so here you have - the problem is the stalking statute being used in a sense arbitrarily and discriminatory against him trying to get him off the street. And I think - I think when it comes right down to it, when you look at Mr. Pouillon's words and his conduct during this time period that the stalking was - he was convicted for, it's clearly constitutionally protected activity and that - that it should not be the basis for a stalking conviction. I would ask that the stalking conviction be set aside, be vacated, either on the grounds that it fits the exception of harassment and is not harassment and, therefore, cannot be stalking or that the statute on its face or as applied is unconstitutional as to this case. Thank

you.

THE COURT: All right, thank you, Mr. McKay. Mr. Leach?

MR. LEACH: Thank you, Your Honor.

THE COURT: And in your research, let me ask right off the starting block, have you found any cases analogous to this one wherein there was constitutionally protected activity and that in the context of some demonstration or here - as in here, signing or having a sign and demonstrating in that way that there is or was a prosecution for stalking or aggravated stalking where an individual, and let's - let's change it slightly, an individual out of a class of persons or out of a group feels singled out and as a result there's a prosecution and a conviction under this particular statute?

MR. LEACH: My research did not - did not find anything that analogous to this - to the present case.

THE COURT: Are they normally, the cases that have been cited by yourself and I think by Mr. McKay, are they normally instances where somebody, for example, in the - one of these cases, White or Valentine, I forget which one, but you have a romance gone - -

MR. LEACH: A lot of the cases - -

THE COURT: - - gone awry and you have a one-on-one situation that we norm - most normally see, at least that I most normally see in the context of a personal protection order once it's requested.

MR. LEACH: That - most of the cases do focus, it seems, on romantic relationships. White and Valentine, both, as well as the Federal cases, *Daily versus Johnson, et al*, are all situations that cover more of a romantic situation. Our argument here would be that his - that Mr. Pouillon's speech did not fall - he was not protesting abortion, which we all agree he has every right to do across from Young Olds or at Young Olds, and he has every right

to protest abortion in his stance there. What he was doing in this case, it was - goes beyond that. It was - it had nothing to do - to do with abortion and, therefore - or nothing to do with his right to free speech there, it was focused on one individual and constant against her and specifically against her. And in - in her case she was - she was pregnant. This is not the person you're protesting abortion against, the person that's trying to have a child. He was saying things that certainly taking her as she found - or any reasonable person, I think, we can - can easily feel that all the elements of the statute are met. I can to through those if you'd like, but I think what Mr. Pouillon was doing was not - not protected speech.

THE COURT: Well, all right, then if you have - and let me ask you one more hypothetical and then you can get on with your argument. But - so, if you have a - and let's - let's stick within this area of anti-abortion demonstrating, and I think having presided over some cases here involving Mr. Pouillon, first at a law office and then at Young Oldsmobile, and then in the context of a personal protection order, the nature - the nature of the conduct is that he will show up a ta certain location, street corner, across from Young Olds, whatever, and will have his sign with messages written on the sign and pictures of quite often a fetus, and a bloody fetus, and will then during those events will talk to or yell at passersby. So, if you have a situation where under federal law with an abortion clinic where somebody is allowed to demonstrate outside of an abortion clinic, do those cases say that's - that's okay as far as it goes but and then draw the line when you start singling out people? So, if you have patients or customers coming into an abortion clinic and that person is yelled at or told to go away or do something else, then is that were the line is crossed where it is no longer constitutionally protected speech, where you single out somebody as opposed to demonstrating to the general masses without singling

out anybody?

MR. LEACH: I think that's - that's where the line would be drawn. I don't know if you there's specific case law that I - I didn't find any specifically on that issue. I did find case - case law that I've cited in my brief including *Dearborn Heights versus Hayes* where they state that threats and harassment are not protected speech. And I think that's what we're talking about here, and threats and harrassment towards an individual, not an overall protest on - on abortion or whatever it is the person is protesting, it's - it's going beyond that and I think that would be our position that - that that is something that - that crosses the line and - and gets conduct that is outside the First Amendment as well as free speech and due process.

THE COURT: Go ahead.

MR. LEACH: Okay. As - I think the - the elements of - of stalking, there's really basically five of them. I'm going to go through those very quickly and show the Defendant has violated them and then get into my argument as far as the - the Defendant's action in this case not being protected speech, and then I'll address the overbroad and vague, there's a fact that the statute is neither overbroad nor vague either on its waste - on its face or as applied to the - to the Defendant in this case. The first element of stalking is there are two or more willful, separate, non-continuous acts of unconsented contact. The - the victim in this case clearly testified that there was thirty to forty times over the course of fifteen to twenty different occassions that the Defendant yelled things specifically at her, not about abortion, but specifically at her. The second element is that a reasonable person would suffer emotional distress. Comments such as, "Is that a baby or a bomb?" "Liar, liar, that's a child of evil and God will drop a bomb on you." are certainly the type of things that a reasonable person - would cause a reasonable person to suffer emotional distress. The third element

is that the conduct caused victims to suffer - caused the victim to suffer emotional distress. Again, Ms. Rawlison testified that she was - this conduct made her upset and nervous and made her afraid to be home alone and afraid to go places. That clearly shows that she suffered emotional distress. The fourth element is a reasonable person standard of a reasonable persons feeling harassed, threatened, fightened, terrorized or molested. And, again, these are repeated conducts - contacts specifically at a person addressing their specific issues, in this case Mr. Rawlison's unborn child and herself. She was the only person pregnant during any of these - during any of these contacts and it's at that point that the line, I think, is crossed. And, again, the fifth element being that - that it did cause the victim to feel harassed, terrorized, and frightened, and Ms. Rawlison testified to all of those things at the District Court trial. Now, as far as Mr. Pouillon's conduct falling within the protected speech exception, there's not dispute that the Defendant is allowed to picked Young Olds Cadillac. He's an anti-abortion pros - protestor and he's lawfully able to picket there. The Michigan Court of Appeals has held specifically that he's allowed to picket there and we agree that he is allowed to protest abortion there. What he did in this case, the Defendant singled out a particular individual and directed his comments specifically towards her. These comments had nothing to do with his anti-abortion protest. What we're - was directed at her solely because, and the Defendant testified to this at trial, that he was upset with her because he felt that she lied at a previous PPO hearing and that this upset him. And he testified that he was upset by this activity. And that's why he singled her out. Not - not because of abortion, this is a pregnant woman, you don't - who, I believe, testified she'd spent thousands of dollars on In-vitro Fertilization because she and her husband desperately wanted to have children and were having problems doing that. And I think in finding a victim as you - or,

taking a victim as you find her, certainly, it would cause her even more distress. But, what this does, this is simply yelling at a particular individual and making them feel threatened, harassed, frightened, terrorized, and intimidated. The conduct here goes beyond what is protected by the First Amendment. The conduct here is criminal stalking.

Now, to address the - the second argument that the - that the statute itself is overbroad or vague, this issue has been specifically addressed by the Michigan Court of Appeals in - in two cases, *People versus* White and *People versus Ballantyne*. In both those - those cases, both held that the statute is not overbroad, it's not vague, and it doesn't impinge on the - on free speech or due process. The Court held that there's a legitimate interest in protecting its citizens and that's where the legislature was going in enacting this statute. Further, it's well established by a number of cases, including *People versus Dragnet*, statute quote to the presumption of - of constitutionality. But here the - the Courts have held that the statute is significantly narrowly tailored to the conduct proscri - prohibited. Quoting White, it says, "The stalking statute provides fair notice of prohibited contact. A person of reasonable intelligence would not need to guess at the meaning of the stalking statutes nor would interpretation of the statutory language differ with regard to the statute's application, in part, because the definition of crucial words and phrases that are provided in the statutes are clear and would be understandable to a reasonable person reading this statute." The - the statute goes to great pains to identify and define the different terms within the statute and gen - and uses their common and generally accepted meaning. Therefore, the statute itself is narrowly tailored and its conduct is defined enough that - it defines clearly enough to prohibit a challenge of overbreadth, vagueness, or violation of free speech. Thank you.

THE COURT: All right, thank you, Mr. Leach. Anything else, Mr. McKay?

MR. MCKAY: Just briefly, Your Honor. If, and I don't know if the Court - I'm not sure - there was tape that was entered into evidence at the trial, it's probably not in the court file, I don't know.

THE COURT: I don't know if it's part of the record, but it's not - -

MR. MCKAY: Okay. And I don't know how much of it - -

THE COURT: - - in the Court's file itself.

MR. MCKAY: I don't - I don't believe the contents of the tape were actually transcribed in the record. I think we went off the record, the Judge listened to the tape, and I don't know where the tape is, but I - I would invite you to listen to it. On the tape, from my recollection, Your Honor, is that this wasn't a sit - this was a tape basically that Lori Rawlison had - had made over a period of time when Mr. Pouillon was across the street. There were instances where you can hear him stating - making the statements that she said he made. But, what I wanted to point out was there were other instances where someone else, for example, Tony Young, was on the premises and Mr. Pouillon addressed Tony as well and singled him out, "Tony, Tony." You can hear him right on the tape doing that. So, this wasn't a situation where he went there specifically for the purpose of harassing Ms. Rawlison. He's there to do what he's always been there to do. And she so happens to come outside, he's going to address her just like he does Tony Young. So, - -

THE COURT: But how does that - how does the fact that one person chooses not to pursue a remedy, how does that prohibit the application of the statute in this case? It's - -

MR. MCKAY: No, what I - -

THE COURT: It's not like an assault that some sensitivities of person A maybe different than sensitivities of person B who would decide to say or pursue and prosecute a - a matter for assault because of my sensitivities. If you go up to a hockey player and you say, "I'm going to tear your eyes out," might be a little bit different reaction than going up to a - a Cellist in the Chicago Symphony who sits first chair, threatening to do the same thing.

MR. MCKAY: No, the only reason I bring that up, Your Honor, is not to - not to say that - that somehow what - what was said to Ms. Rawlison was not said to her but what Mr. Leach was indicating is that - that you, basically, and here's the argument, that he was singling her out and I think if you listen to the - listen to the tape, just because someone makes the comment specifically at someone, I don't think necessarily means that they're stalking that person, and if you listen to the tape, he's - he's out there doing this constitutionally protected activity that he's always done. And I - I think it should just be taken in the context and the only reason I make that statement is that - that he did address other people while he was there and he was not there specifically to harass her. The only other thing that I would address is Mr. Leach's comment about the - the Supreme Court or the Court of Appeals already dealing on - dealing with the issue of vagueness and over-broad doctrine in regards to the statute. They may - they did, Your Honor, and I would concede that on its face; however, they did not - those - those Appellate Courts have not addressed the issue that I raised in this brief that as applied to this Defendant and these actions that it is unconstitutional. So, I think that - that still is within the discretion of the Court to indicate that as applied to this Defendant and these actions that the statute's unconstitutional. Thank you.

THE COURT: All right, thank you. So, this conviction that - that is at issue here occurred in November of the year 2000 under

the stalking statute, again, MCLS 750.411 (H), and the elements have been broken down for purposes of discussion of stalking and I don't think that I need to go through the specific elements just for the sake of reciting them. The questions are two-fold in this appeal. Number one, whether or not the conviction ought to be set aside because the activity on the part of the Defendant Appellant is constitutionally protected activity. And the second issue framed is whether or not due to vagueness or overbreadth or overreaching, overbreadth, I guess, is the term that case law refers to, the statute itself, is uconstitutional. The - on the first argument, the facts as I understand them included the Appellant, Mr. Pouillon, as I already stated, I think, at the outset, being outside and across the street from Young Oldsmobile, in Caledonia Township, Shiawassee County, conducting constitutionally protected activity. And both sides concede that. And, again, the nature of the activity is standing, I think you've said here and I'll accept your statements, across the street from Young Oldsmobile and just outside of the area of Ponderosa Restaurant with an anti-abortion sign and then Defendant yelling statements across the street at - at the person of Lori Rawlison who at the time was a - an individual female who was several months pregnant. According to the facts, some of which you've outlined in your brief, the statements occurred during June and July in the year 2000 thirty to forty times, fifteen to twenty different occasions, I think you both agree with - with the number, but in any event, wherein the Defendant was yelling at Ms. Rawlison who apparently was an employee of Young Oldsmobile at the time and she was on the premises of Young Olds, statements such as, ""Liar, liar, pants on fire. Is that a baby or a bomb?" referring to her pregnant condition, and "That baby is a child of evil and God will drop a bomb on you." So, as I understand it those are some of the types of statements that were aimed and directed specifically at Lori Rawlison. And interestingly she also testified,

according to Defendant's recitation of the facts, she testified at trial that Defendant directed statements at other individuals as pointed out here by Mr. McKay, other individuals such as employees of Yung Olds, including Tony Young. According to her trial testimony she testified that she was scared to death, she was nervous all the time, she felt frightened, intimidated, harassed, that she suffered emotional distress and that she had feelings that, according to her testimony, "You're afraid if you go outside, you know, he's going to be there and at night I'm afraid to stay at the house by myself. I have to watch places before I go to them. I have to be in fear that something is going to happen." So, that's the testimony and as I understand it then as pointed out here today then there was no instance where the Defendant actually did go to her house or call her on the telephone, that the conduct that occurred, occurred, as already stated, at the business with the Complainant being at the business and Mr. Pouillon being across the street. Now, regarding that, is that constitutionally protected activity? Under the statute, and the statute, again, defines stalking and it speaks in terms of a willful course of conduct and what a reasonable person, so we have the reasonable person standard, would feel, would a reasonable person feel terrorize, frightened, intimidated, threatened, harassed, or molested, and then - and then articulate that to the individual complainant where it says, "And that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested. The - the Prosecution, that's what the Prosecution was about, and that, apparently, is what the conviction was about. And, again, this was a bench trial, in the District Court. So, it - it appears that on that grounds, and I think one of the cases cited by Mr. McKay, is the *Cantwell*, C-A-N-T-W-E-L-L, *versus Connecticut* case cited at page thirteen of his brief and for the proposition that, "The state may only suppress protective speech in traditional public forum when they are fighting words which are

words which would cause a clear and present danger of riot, disorder, interference with traffic upon the public street and other immediate threats to public safety, peace, or order." Now, it appears that the - the first wrong - prong here is - is satisfied of the - in this prosecution that the conduct was not constitutionally protected activity according to the testimony of the Complainant because in the testimony of the Complainant, and even if you look at the testimony of the Defendant with words that were directed toward the Complainant, she testified to the statutory criteria in terms of feeling harassed and that the stalking, again, as statutorily defined, occurred as far as she was concerned in terms of her own personal well-being. So you could transpose this, I suppose, and let's not make it a pregnant lady, let's make it a handicapped person in a wheelchair who's being mocked and made fun under the guise that the Defendant is protesting an abortion issue. And would there be any different result there? Fighting words? I think that you could make a good argument even in the context of the Cantwell decision that in either instance, this or in the hypothetical wheelchair case, that the person who the words are aimed at would feel harassed. So, I think that - that on the first ground that there - I find that there's - there's not constitutionally protected activity.

So, then we get down to whether or not this is constitutionally - the statute itself is unconstitutional because of vagueness or over-overreach, or I guess what the case law is calling overbreadth. And in that regard, Mr. McKay's referred to some of the federal case law and that case - those cases, I think, are good law, obviously. It doesn't matter what I think, they are good law. But, I also have some cases in Michigan that are directly on point, that interpret this particular statute, and one of those cases is - that's been cited is People versus Ballantyne, B-A-L-L-A-N-T-Y-N-E, at 212 Michigan Appeals, 628, and that was, I think, a situation where, unlike this perhaps, there wasn't a defendant who was out

demonstrating, this was a one-on-one setting and the facts are pretty brief here. As a matter of fact, they don't really set forth the facts, but it appears to be a one-on-one situation as most of these are. Either a romantic situation, relationship, I mean, gone south or sour or something of that nature. The Court in Ballantyne refers to the White case which interestingly is in the same volume, 212 Michigan Appeals at page 298. romantic situation, relationship, I mean, gone south or sour or something of that nature. The Court in Ballantyne refers to the White case which interestingly is in the same volume, 212 Michigan Appeals at page 298. And at page 313 they talk about the statute specifically now in terms of that prosecution. And that prosecution in White was, I guess, what is more traditional factual scenario and they start out, "This case involves a near tragic romantic relationship," and then they go through the facts of that relationship. In the White discussion at page 314 then the Court says, "Given this Court's belief that the egregious nature of the conduct that must be proved to find a violation of the stalking statute - stalking law as substantial, there certainly exists a rational connection between such conduct and the presumption that the victim would feel harassed or frightened by its continuation. And then it goes in to an equal rights discussion and finds no due process or equal rights violation. So, if that type of - those types of cases have interpreted the constitutionality of the statute, and it seems to be that the statute puts the ordinary individual or person on notice of what exactly conduct is prescribed by the statute, and in this case, the statute does not seem to be vague at all. In fact, it's, I think open to interpretation by one's common understanding and usage of the English language. And I think that if you sum up the nature of the statute here in terms of constitutionality, it seems to achieve the purpose for which it's intended, and that is to prohibit individuals from being stalked to the point of having the emotional damage, injury, emotional distress as

the statute talks about. So, in - in the context of this prosecution, it seems that the conduct, and I find, is not constitutionally protected conduct nor is there any application of the statute that seems unconstitutional here, and the statute itself certainly with these facts, I would not find to be unconstitutional in any sense of the word, including vagueness or overbreadth.

So, the conviction and sentence are affirmed and the appeal is denied and if you'll draw an order to that effect, Mr. McKay, then I'll go ahead and sign it. Okay?

MR. MCKAY: I will, Your Honor, thank you.

THE COURT: Thank you.

E1

STATE OF MICHIGAN

IN THE 66TH DISTRICT COURT
FOR THE COUNTY OF SHIAWASSEE

THE PEOPLE OF THE STATE OF MICHIGAN, File No. 00-ST-1287

v.

JAMES L. POUILLON,
Defendant.

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NON-JURY TRIAL

BEFORE THE HONORABLE WARD L. CLARKSON,
DISTRICT JUDGE
Corunna, Michigan - Thursday, November 30, 2000

THE COURT: Now, this is People of the State of Michigan v. James Pouillon. We have file number 00-ST-1287 and 00-ST-1289. There's been some arrangements, some agreements as far as the files. I don't think those have ever been put on the record. I think we probably need to do that.

MR. GOETZ: Your Honor, if I may, Michael Goetz, appearing on behalf of the People. I have discussed this with Mr. McKay, and we've come to the agreement that I'm going to be dismissing the one case, 00-ST-1289. We will be proceeding on the other case. However, we will be preceding for offenses that occurred during the month of June and July. I just noticed that that particular complaint indicates July of 2000. We will be taking testimony as

far as incidences that occurred in both June and July.

* * * *

THE COURT: Okay, and then there's a–so, then pursuant to that agreement, 1289 is dismissed in its entirety?

MR. GOETZ: Correct, your Honor.

THE COURT: And basically, what's happening is that you're consolidating the stalking charge on 1289 and 1287 into one charge of stalking?

MR. GOETZ: Yes, your Honor.

* * * *

LORI ROWLISON

called by the People at 9:22 a.m., sworn by the Court Recorder, testified:

DIRECT EXAMINATION

BY MR. GOETZ:

* * * *

Q. You had a–you had an opportunity to testify against Mr. Pouillon in a previous court case; correct?

A. Yes.

Q. And when was the previous one?

A. I'm not real good–but, probably, two or three years ago.

Q. Okay, Ms. Rowlison, I'm going to more specifically draw your attention back to June of this year, 2000, and July of this year, 2000.

Q. Okay, is that in Shiawassee County?

A. Yes.

* * * *

Q. Ms. Rowlison, you indicated that Mr. Pouillon would be located across the street?

A. Yes.

Q. Okay.

A. This is Ponderosa.

Q. Okay.

A. And then this is where he would stand, somewhere in this general area here, and this is our front door going out.

Q. Okay, now, that road that separates Ponderosa and Young Olds, that's M-21?

A. Mm-hmm.

Q. Did it cause you to feel harassed?

A. Yes.

Q. Would you say that you suffered emotional distress?

A. yes.

* * * *

Q. Ms. Rowlison, what I'm going to do is I'm going to ask you to listen to this tape, and at the end of the tape, if you can indicate to me whether or not that is an accurate representation of what you heard on that date–on those dates.

* * * *

(At 9:41 a.m., starting tape over again)

(At 9:43 a.m., tape is stopped)

BY MR. GOETZ:

Q. Ms. Rowlison, did you have an occasion to hear that particular tape?

A. Yeah.

Q. And is that an accurate representation of what Mr. Pouillon was doing on that particular day?

A. yes.

Q. What–what was it that he said on that tape just then?

A. "Liar, liar," and then he said, "Is that a baby or is that a bomb?"

Q. Okay. Thank you.

THE COURT: Were you outside when that was said?

THE WITNESS: Yes, sir.

(At 9:45 a.m., tape begins playing again)

(At 10:00 a.m., tape is stopped)

BY MR. GOETZ:

Q. Ms. Rowlison, is what you heard on the tape an accurate reflection of what you heard while you were–while you were taping these–these things?

A. Yes.

(At 10:00 a.m. PX 1 marked)

MR. GOETZ: Your Honor, I've spoken with Mr. McKay. We're going to be offering People's Proposed Exhibit number one, the tape, into evidence. Mr. McKay says he's got no objection to the entry of that exhibit.

MR. MCKAY: No objection, your Honor.

THE COURT: It's admitted.

(At 10:00 a.m., PX 1 admitted into evidence)

MR. GOETZ: Your Honor, I have no further questions of this witness at this time. I've spoken with mr. McKay. There is one other audio tape that we would like the Court to listen to, but, unfortunately, the trooper is not here at this time, so we'd request that we could recall her at a later time to verify the tape for Mr. McKay's benefit.

THE COURT: Okay.

MR. GOETZ: Thank you, your Honor.

THE COURT: Cross examination.

CROSS EXAMINATION

Q. What's that?

A. I didn't testify to a bomb.

Q. You thought . . .

A. I said that I thought that there was something in there, okay. At the time he was doing it, someone all of a sudden says ...talking about bombs three years ago and talking about bombs today are–have a whole different connotation with things like Columbine High School and all that stuff. I mean, bombs . . .

Q. I'm talking bout today when you testified today.

A. I know. I know. Yes, I'm sorry. I forgot.
Q. Why is it that you forgot back in June and July when you discussed this with the officers–you forgot to testify about it today?
A. I don't know. I guess I forgot.
Q. Now, please describe what went on and what you–what you testified to, previously about this package on your porch. Can you describe that, please?
A. I had gotten up in the morning, and I had a baby, and I went out on the front porch, and there was a ratty old box on my front porch, and it scared me. I didn't know what it was, and the first thing that came to mind is that he could have put something on my porch.

I didn't know what it was so I called my mom over to get the baby so I could go and see what it was, and it happened to be a thing of tea cups.

I felt very silly after I opened it up, and it was tea cups, but you know, I'm always afraid he's going to do something, and that was the first thing I thought–that there was something in there. I didn't know if it was a bomb or, you know, he's–I didn't know what it was.
Q. Okay, and how long ago did this happen?
A. Four years ago, probably.
Q. Well, you testified to it in Circuit Court in a matter up thee on–on the PPO...the previous PPO; correct?
A. Correct, correct.
Q. Okay, and was there other–was there political candidates as well that–that Young Olds had put signs up for?
A. Damion Frasier.
Q. Okay, Damion Frasier ran for Congress; is that correct?
A. Yeah.
Q. Okay, and that's–apparently, that's your beliefthat's why Mr. Pouillon came out there; correct?

A. Right.
Q. And he's been–there's been no court order. he's been out there for the last six years or so; correct?
A. Mm-hmm, yes.
Q. Is that a yes?
A. Yes.
Q. Now, I also heard on the tape what sounded like it was a loud voice that came over the tape. Was that–what is that?
A. The intercom system.
Q. Okay, and then there–you had some discussions with other people; correct?
A. yes.
Q. On the tape. I also heard on the tape, laughing. Do you recall why you were laughing?
A. Probably just a customer out there or something, to try to conduct business as if nothing was going on.
Q. Okay, and you were able to conduct business; weren't you?
A. To some extent, not fully.
Q. Okay, now you say you're the sales manager at Young Olds?
A. yes.
Q. And you're also related to Bruce Young; is that correct?
A. yes.
Q. What is Bruce Young's position?
A. He's the dealer.
Q. Okay, and he–of the corporate, on the corporation, I'm assuming there's a corporation. What is his position with the corporation?
A. Vice-president.
Q. Okay, and do you have any position in the corporation?
A. Secretary.
Q. Okay, and you own stock in the corporation?
A. Yes.

Q. Okay, and isn't it–isn't it true that the last six years when Mr. Pouillon has been out there, he's hurt–in your belief, he's hurt Young Oldsmobile's business; is that right?

A. Probably, yes.

Q. Okay, and you–you–you obtained a PPO against Mr. Pouillon, you said, I think, two, three years ago?

A. Yes.

Q. And he was restricted–couldn't come near Young Oldsmobile Cadillac; correct?

A. Right.

Q. Do you think that was better for business?

A. Well, I'm sure it didn't hurt, yeah.

Q. Okay, and isn't–you obtained a PPO then in July of this year against Mr. Pouillon again; right?

A. Right.

Q. And has business been better since he's not been there?

A. Well, probably not, but it's nothing to do with that. Probably a turn–downturn in the economy hasn't helped us out too much, lately.

Q. Okay, and there's a light just to the west of Young Oldsmobile Cadillac; is that correct?

A. Yes.

Q. And there was at the time of this–this complaint?

A. Yes.

Q. And there's a left turn lane; isn't there, for that light?

A. yes.

Q. Okay, so there'd be five lanes of traffic; is that right?

A. Right.

Q. And Jason Cords use to work for Young Olds; is that correct?

A. Yes.

Q. And he–he filed for a PPO against Mr. Pouillon as well; correct?

A. Right.
Q. And that was what...two, three years ago, like the same time as you did the first time?
A. Correct, correct.
Q. And Kerry Hittle, is he still employed?
A. yes.
Q. And he–he's been yelled at by Mr. Pouillon, too; right?
A. Right.
Q. Have you–have you ever made any comments back to Mr. Pouillon?
A. No.
Q. Okay, have you ever observed any other employees or customers at Young Olds make comments back to Mr. Pouillon?
A. I'm sure they have. I can't think of anything in particular right now.
Q. Do you remember employees making–verbally, yelling back at Mr. Pouillon?
A. Maybe yelling shut up or something like that.
Q. Okay, what about customers? Can you think of any . . .
A. Not that I can think of.
Q. What about any gestures? Did any employees make gestures towards Young Olds–or towards Mr. Pouillon when he was over there?

MR. GOETZ: Your Honor, I'm going to object. I don't see the relevance in this line of questioning.

THE COURT: It's allowed. Go ahead.

MR. GOETZ: Thank you, your Honor.

BY MR. MCKAY:
Q. Have you ever observed any employees of Young Olds make gestures at Mr. Pouillon?
A. Not that I, personally, observed, no.
Q. Okay, but you've heard about it, apparently? You've never

made any gestures?
A. No.

* * * *

REDIRECT EXAMINATION

Q. You testified that In July you had gone to your obstetrician and had your blood pressure taken, and that your blood pressure was up that day.
A. A little bit.
Q. Did you have a court date that day, as well?
A. Not that date. That was in August when I had–when I had to go to the doctor before I had a court date.
Q. Okay, you indicated that Mr. Pouillon followed you around in Meijers?
A. yes.
Q. Can you elaborate on that a little bit? You and your husband went to Meijers? How is it that you first noticed Mr. Pouillon?
A. I noticed him in an aisle, and . . .
Q. Did he notice you?
A. Yes.
Q. Now, when you noticed him in this aisle, what, if any, action did you take?
A. I would go and skip a few aisles instead of going in the normal down every aisle.
Q. Okay, and when you went and skipped an aisle, what happened?
A. He would show up at the opposite end of the aisle.
Q. Okay, and what would you do?
A. Go–finally, it got to the point where my husband just said, "Go over by the deli, and I'll meet you over there."
Let's back up just a little bit. After you went to this other aisle, and Jim Pouillon showed up, what, if anything, did you do then?
A. I went to a different–skipped back and forth to a different aisle.

Q. Okay, and he–and he–just randomly?
A. Yes.
Q. Okay, and what happened when you randomly skipped these different aisles?
A. He would always show up at that aisle.
Q. In the same aisle?
A. Yes.
Q. Was he shopping at that time?
A. I believe so, yes.
Q. Aside from yourself, does Mr. Pouillon single anybody else out, specifically?
A. As for threats?
Q. Yes.
A. As for threats, no.
Q. How about specific comments?
A. yes.
Q. Who is that?
A. Tony.
Q. Anybody else that's employed?
A. Maybe my dad every once in a while, but . . .
Q. Have you ever heard Jim Pouillon say to your dad or say to Tony Young any–any references whatsoever about bombs?
A. No.
Q. Did you take Jim Pouillon, literally, when he was saying bombs...that term?
A. Yes.
Q. In reference to bombs to you?
A. Yes.
Q. And this happened on more than 20 occasions; did it not?
A. Yes.
Q. In fact, in response to one of Mr. McKay's questions, you, I believe, and please correct me if I'm wrong, you indicated that Jim

Pouillon told you when he said God is going to drop a bomb on you, he also said that you had better watch out; did he not?
A. Yes.
Q. Did that concern you?
A. Yes.
Q. You have no proof that Jim Pouillon was making fun of you other than what Mr. McKay was–had said to you; correct?
A. Correct.
Q. Are you still scared today?
A. Yes.
Q. Of Mr. Pouillon?
A. Yes.
Q. In fact, based on Mr. McKay's questioning in response to all this, you had gone to Circuit Court and got a personal protection order against Mr. Pouillon; did you not?
A. Correct.
Q. And was that granted?
A. Yes.
Q. Was it based on the same type of conduct that you have testified here in court today?
A. Yes.

* * * *

RECROSS EXAMINATION

BY MR. MCKAY:
Q. And when was this incident at Meijers...years ago?
A. Yes.
Q. I mean, five, six years ago?
A. Probably five years ago.
Q. Okay, you didn't do anything? You didn't make any complaints with the–with the police or anything?
A. I just got out of there.
Q. And you said Mr. Pouillon has, also, singled out your dad,

possibly, and Tony; correct?
A. yes.
Q. But he's never singled you out by name like he does them? Just–the pregnant, the bomb, the baby issues; right?
A. Right.
Q. Now, the last question Mr. Goetz asked you had to do with the PPO that you obtained. Isn't one of the other reasons that you got the PPO was to protect the business? You're an officer of the corporation; correct?
A. I'm concerned about me and my family, okay. The business . . .
Q. But wasn't–didn't it come into your mind?
A. The business, no, because we've obviously survived with him being out there, okay. We survive with people being out there. People know we're not those type of people, but I'm worried about me, and my kids, and my husband.
Q. You're an officer of the corporation?
A. Right, right.
Q. Isn't it fair to say that most employees and officers of the corporation don't want Mr. Pouillon out there across . . .
A. Oh, yeah, he's a nuisance.
Q. And prior to you–prior to–then during this–this July period of 2000, there were numerous complaints almost every day where you–somebody had called Central Dispatch; correct?
A. Mm-hmm.
Q. Is that a yes?
A. Yes.
Q. Okay, so you, basically, wanted him out of there; correct?
A. I didn't get the PPO to get him out of there. I got the PPO to protect me and my family.

MR. MCKAY: Thank you. I have no further questions.

MR. GOETZ: Ms. Rowlison, with the Court's permission, I'm

going to have you listen to this tape, and if you could, likewise, as you did with the last tape, tell me if the contents contained thereon are an accurate representation of what you had taped on those particular days?

A. After we listen to the whole thing?

Q. After listening to . . .

(At 10:26 a.m., tape playing in the courtroom)

(At 10:52 a.m., tape is stopped)

REDIRECT EXAMINATION

BY MR. GOETZ:

Q. Ms. Rowlison, is that an accurate representation of the way you heard the events when you taped them?

A. Yes, sir.

(At 10:52 a.m., PX 2 marked)

* * * *

THE COURT: It's admitted.

MR. GOETZ: Thank you, your Honor.

(At 10:53 a.m., PX 2 admitted into evidence)

REDIRECT EXAMINATION CONTINUED

BY MR. GOETZ:

Q. Ms. Rowlison, was there ever an occasion when you went outside, where he did see you, that he didn't say anything?

A. I never know if he's seen me or not, so, I don't know. You know.

Q. Okay, in the references to the baby and the bomb and all of the bomb references, do these two tapes–so they encompass all the times he said that, or were there other times?

A. No, there was other times.

Q. Okay, on separate different days?

A. Yeah.

Q. Throughout the course of June and July?

A. Yup.

MR. GOETZ: Ms. Rowlison, thank you. I have nothing further.

THE COURT: Any cross exam?

MR. MCKAY: Nothing, your Honor.

THE COURT: You testified earlier that you believe that he yelled more than 20 times, "Is that a bomb or a baby?" On how many different days do you believe he yelled that?

THE WITNESS: Probably, in the course of 30, 40 days, you know, probably 20 . . .

THE COURT: You believe that he yelled that at you on 30 or 40 different days?

THE WITNESS: Well . . .

THE COURT: Let's narrow it down to June or July because I believe that's what the complaint was.

THE WITNESS: Probably the end of June, the first part of July, like the tail end of June and the first part of July.

THE COURT: Okay, how many times, again, if you–if you can answer it. If you cannot, that's fine, but if you could give us a rough estimate.

THE WITNESS: I'd say, and I don't mean just, "Is that a baby or a bomb?" It could have been the other, you know, "Is that the child of evil? God's going to drop a bomb on you."

THE COURT: Okay.

THE WITNESS: I'm meaning–I don't mean just that one statement of "Is that a baby or a bomb?"

THE COURT : Okay.

THE WITNESS: Probably, you know, 30, 40 times.

THE COURT: On 30, 40 different days?

THE WITNESS: No, at times.

THE COURT: Okay, how many different days do you think, if you could estimate?

THE WITNESS: I'd say 15 to 20.

* * * *

MICHAEL J. ZERKA

called by the People at 11:12 a.m., sworn by Court Recorder, testified:

DIRECT EXAMINATION

BY MR. GOETZ:

Q. Sir, could you, please, state your full name and spell your last name for the record?

A Michael Jay Zerka, Z-E-R-K-A.

Q. Mr. Zerka, how are you employed?

A. I've been employed there as a–I do all of the appraising there.

Q. For where?

A. Young Olds Cadillac.

Q. And that's here in Shiawassee County?

A. Yes, it is.

Q. Do you know Lori Rowlison?

A. Yes, I do.

Q. How do you know her?

A. I've known her for about 25 years.

Q. 25 years. Okay, have you worked with her during that time?

A. Yes.

Q. Do you know Jim Pouillon?

A. Yes, I do.

Q. Do you see him here in the courtroom today?

A. Yes, I do.

Q. Could you, please, point to him and indicate for the record what he's wearing?

A. Right there.

Q. Seated next to Mr. McKay in the suit?

A. Yes, it is.

MR. GOETZ: Let the record reflect the witness has identified Mr. Pouillon, your Honor.

THE COURT: It may.

MR. GOETZ: Thank you.

BY MR. GOETZ:

Q. Mr. Zerka, I'm going to draw your attention back to, I believe it was either June or July of this year. Did there come a point in time where something unusual happened at your dealership, reference Mr. Pouillon and Ms. Rowlison?

A. Yes, there was.

Q. Okay, could you–could you explain to the Court the circumstances surrounding what was unusual?

A. I was walking out of the new–I was walking out of the new car dealership, going over to the used car dealership, probably 20 yards away, when I heard him say something. He was–she was outside with a customer.

Q. Okay, when you say him, who are you referring to?

A. Mr. Pouillon.

Q. Okay, you heard him say something?

A. Say–holler out, is that a–what did he say? "Is that a bomb, or is that a baby?" I turned around and went back and seen her and talked to her. Her demeanor was–she was quite upset.

Q. What was her demeanor? How–how–how was she exhibiting being upset?

A. Just shaky, upset.

Q. Who was . . .

A. I think fear.

Q. Who was Mr. Pouillon directing that–bomb or baby comment?

MR. MCKAY: Your Honor, I'm going to object.

THE WITNESS: To Lori Rowlison.

MR. MCKAY: You're asking for speculation.

THE COURT: Well, if he can answer. He–he's going to have to lay some foundation.

BY MR. GOETZ:

Q. Let me ask you this, Mr. Zerka. Did–were you under the

impression that Mr. Pouillon was speaking to you at that point in time?

A. No, he was speaking to Lori Worlison.

Q. Okay, were you near Lori Rowlison at that time?

A. About 20 yards away.

Q. Okay, was anybody else at Young Olds who was pregnant during that period of time?

A. Not that I know of.

Q. Okay, what, if anything, did you do at that time?

A. Called the police.

Q. Why did you call the police?

A. Well, because I think it was unfair to her being seven months pregnant, and she's never hurt anybody in her entire life. She's the most decent person in the world.

Q. Okay, is your testimony that Mr. Pouillon's comments visibly upset Ms. Rowlison?

A. Very much so.

MR. GOETZ: Okay, Mr. Zerka, thank you. I have nothing further.

THE COURT: Cross examination, Mr. McKay.

MR. MCKAY: Just briefly.

CROSS EXAMINATION

BY MR. MCKAY:

Q. Mr. Zerka, how far was Mr. Pouillon when he made that statement you alleged.

A. Just on the other side of the street on 21.

Q. How far away is that?

A. Fifty yards.

Q. Okay, so, 150 feet.

A. It could be.

Q. Is that the first time you ever heard him yell or say anything from that position, that location?

A. I've heard him for four years.
Q. Okay, and he's addressed a number of different people; correct?
A. Pardon me?
Q. He's addressed or–or made statements to a number of different people; correct?
A. I would think so. Never–never to me, but . . .
Q. He never made any statements to you. What do you mean by that? He never called you by name?
A. No, I don't think he ever knew my name.
Q. Did he ever make–did he ever yell or make any statements while you–when you walked outside or while you were outside?
A. I've heard him holler, "Liar, liar." Whatever that means, I don't know.
Q. Okay, and you've basically . . .
A. I've heard him–I've heard him holler that about a million times.
Q. Okay, all right. And you, basically, just ignore him; right?
A. I ignore him as much as I possibly can.

MR. MCKAY: Okay, thank you. I have no further questions.

MR. GOETZ: Nothing further, your Honor.

* * * *

HECTOR LLERENA

called by the People at 11:12 a.m., sworn by the Court Recorder, testified:

DIRECT EXAMINATION

BY MR. GOETZ:

Q. Trooper, could you, please state your full name and spell your last name for the record?
A. Hector Manuel Llerena, L-L-E-R-E-N-A.
Q. Okay, and trooper, how are you employed?
A. I'm a trooper with the Michigan State Police as a police officer.
Q. And what's your current assignment?

A. I'm with the Owosso post.

* * * *

Q. Trooper Llerena, have you ever had any prior contact with Mr. Pouillon?

A. No, I had not.

Q. Prior to that date?

A. No, I had not.

Q. Did you know who Mr. Pouillon was?

A. I had seen him, but I had never made contact with him before.

Q. Okay, you had an occasion to speak with Lori Rowlison?

A. Yes, I did.

Q. And based on your conversations with Ms. Rowlison, did you–did you interview anybody else at Young Olds?

A. Yes, I did.

Q. Okay, and based on that investigation, did there come a point in time where you came in contact with Jim Pouillon?

A. Yes, there was.

Q. Okay, and when did that occur?

A. Probably two weeks, maybe three weeks after the day of the incident.

Q. Okay, if I told you it was July 18th, what your report reflects is a supplementary date, would that sound about right–sound about right?

A. Yes, it would.

Q. Where did you have occasion to make contact with Mr. Pouillon?

A. I had been looking for him, and I came across him at the intersection of M-21 in Owosso.

Q. Okay, and did you stop and make contact with him?

A. Yes, I did.

Q. Can you tell the Court what the circumstances surrounding your conversation was with Mr. Pouillon?

A. I had asked him about the case I was investigating him–investigating. I informed him that the victim was Lori Rowlison from the Olds Cadillac, and then I asked him why he chose the places where he chose to do his demonstration at.
Q. Okay, well, let's–let's back up. Was Mr.–was Mr. Pouillon under arrest at that time?
A. No, he was not.
Q. Was this just a one on one conversation out on–out on the road at 21 and–was it 21 and M-52?
A. 21 and M-52.
Q. Okay.
A. He was a little apprehensive at first of talking to me. he asked if I had a warrant for his arrest. I told him I did not, and that I, simply, wanted to talk to him at that time.
Q. Okay, and did–and did you, in fact, talk to him?
A. Yes, I did.
Q. Okay, what, if anything, did–did Mr. Pouillon indicate to you regarding what had happened at Young Olds?
A. He didn't deny being there. When I asked him why he chose that spot out of all the places in the county to be in front of, that's when he started informing about his anti-abortion crusade, and how Young Olds Cadillac–some of the political signs to be posted in front of their establishment when, I guess, I believe his name to be attorney George Geddis . . .
Q. Okay.
A. Had been running for Judge in this county.
Q. Okay, did you discuss with Mr. Pouillon, at any time, some statements reference a bomb?
A. Yes. I informed him that Lori Rowlison had brought to my attention the shouts and screams that Mr. Pouillon had made reference to her, clearly, noticeable pregnancy, and that Mr. Pouillon had made mention–the shouts were something to the effect

of, "Is that a baby or is that a bomb?" And I asked him why he was making such a statement?

Q. Okay, did Mr. Pouillon, in fact, indicate to you that he had made those statements?

A. Yes, he did.

Q. Did he indicate to you who he made those statements to?

A. he stated that he did not know her name, but he mentioned the fact that he had been to court against her in the past, and that she is the female that was, clearly, pregnant.

Q. Did he indicate something to you about–about that previous court date?

A. Yes, he did.

Q. As it relates to the–to the issue of the bomb?

A. Yes, he did.

Q. What, if anything, did he indicate to you?

A. He stated that Lori Rowlison had lied under oath in front of the Judge claiming that Mr. Pouillon had placed a bomb underneath her porch at her house, and that's how the bomb issue came up.

Q. Okay, did–did you ask him why he would make such a statement as far as pregnancy–her pregnancy and the baby and the bomb?

A. Yes, I did.

Q. And what was–what was his response to that?

A. He stated that it was a legitimate question. He didn't know why I was–why he should be questioned as to why he was asking that. That women have been known to carry items on their persons and in their bodies, so it was a legitimate question in his mind whether . . .

Q. Did he–did he state to you that he didn't know if it was a baby or a bomb on her person?

A. I–I believe that's what he said.

* * * *

CROSS EXAMINATION

BY MR. MCKAY:

Q. Trooper Llerena, you indicated that you went there on a call looking for a disorderly person or disorderly suspect; right?

A. Yes, I did.

Q. And did you make any determination, at that point, when you saw Mr. Pouillon that he was being disorderly, or that he was violating any law at that point?

A. No, I could not, not from within my car, no.

Q. Okay, and when–even when you went outside, did you hear him yelling or saying any words?

A. I don't recall.

Q. You don't recall whether you did?

A. No, my–my intention was to meet with the complainant and ask the complainant what the problem was. I don't recall if he had made any statements after I arrived.

Q. Okay, but you didn't arrest him for disorderly conduct; correct?

A. No, I didn't.

Q. Okay, is it because you were informed or you–you believed, as a police officer, that he wasn't being disorderly at that point?

A. No, sir, I don't make arrests until I get the whole story, and I had to talk to the complainant to see what the story was.

Q. And then even after you talked to the complainant, you didn't, immediately, request a warrant on Mr. Pouillon; correct?

A. That's correct, I didn't.

Q. You wanted to get his side of the story; correct?

A. Yes, sir.

* * * *

STACY J. SHEPARD

called by the People at 11:24 a.m., sworn by the Court Recorder, testified:

DIRECT EXAMINATION

BY MR. GOETZ:

Q. Deputy, could you, please, state your full name and spell your last name for the record?

A. Stacy Jean Shepard, S-H-E-P-A-R-D.

Q. Deputy, how are you employed?

A. I'm employed with the Shiawassee County Sheriff's Department as a Deputy Sheriff, road patrol division.

* * * *

Q. Okay, did you have occasion to be working on Saturday, July 15th, of this year?

A. Yes.

Q. Approximately 11:00 in the morning?

A. Yes.

Q. Did you have occasion to be in the area of Young Olds?

A. I was dispatched to a complaint at Young Olds.

Q. Okay.

A. From the Sheriff's Department.

Q. Okay, what was, if you can recall, do you recall what the basis of that dispatch was?

A. The basis of the dispatch was a harassment complaint. The dispatchers had informed me that the complainant's name was Lori, no last name was given, but the suspect was James Pouillon.

Q. Are you familiar with Mr. Pouillon?

A. Yes, I am.

Q. Okay, through him in his demonstrations around town?

A. Yes, and I have had occasion to take an assault report where he was the victim.

Q. Okay, did you have occasion to speak with this Lori while at Young Olds on that date and time?

A. Yes, I did.

Q. Okay, and who is Lori...Lori Rowlison?

A. Yes.
Q. Okay, and she testified here in court today?
A. Yes.
Q. Okay, so you began your investigation with information you obtained from her?
A. Yes.
Q. Was Mr. Pouillon around at the time that you arrived on scene?
A. Yes, he was. He was standing across the street near Ponderosa.
Q. Okay.
A. And he had yelled across to me that he wanted to speak with me, and I told him I would be over as soon as I had spoke with the complainant.
Q. Okay, so–can you–do you see the circle that's up on M-21 right here?
A. Yes.
Q. Would that–would it–would be have been in the area of this location or where, in relation, to Ponderosa?
A. He was very–if he wasn't exactly in that area, he was very close to it.
Q. Okay, and isn't there–isn't there a driveway that comes into Young Olds right about here?
A. Yes, there is.
Q. Where did you–did you pull into that driveway?
A. Yeah, I believe I pulled into that one and pulled around behind the doors, the entrance doors, to the business.
Q. Okay, which would be located on the side right there.
A. Yes.
Q. How long did you stay with Ms. Rowlison?
A. I'd say, probably, a half hour to an hour.
Q. Okay, now, when you were finished obtaining the information you needed from Ms. Rowlison, did you–did you talk to any other

witnesses?

A. No, I had asked her if there were any other witnesses, and she had stated at that time, she didn't want to disclose any names. She didn't want the employees or any customers that had observed Mr. Pouillon to be harassed by him.

Q. After your investigation was complete at Young Olds, what, if anything, did you do?

A. I looked across the street for Mr. Pouillon, and he had left.

Q. Did you–did you attempt to locate Mr. Pouillon after that time?

A. Yes, I did.

Q. And was it that same day?

A. Yes, it was.

Q. Can you tell us where you came in contact with Mr. Pouillon?

A. He was on Main Street in Owosso out in front of City Hall.

Q. Okay, and you stopped to talk to him?

A. Yes, I did.

Q. Was he under arrest when you stopped to talk to him?

A. No, he was not.

Q. What, if anything, did you indicate to Mr. Pouillon when you first arrived, in relation to your investigation?

A. I explained to him why I was there to talk to him. I was there to speak to him abut the complaint that had been filed by Lori Rowlison.

Q. What, if anything, did Mr. Pouillon indicate to you?

A. If I can–this is a copy of the report, if it's all right . . .

Q. If it would refresh your recollection, certainly.

A. Yes. I had asked Mr. Pouillon if he had made some remarks to the pregnant lady at Young Olds. He . . .

Q. Did he indicate to you whether or not he had?

A. He said, yes, he was addressing her.

Q. Okay, the pregnant lady?

A. Yes.

Q. Okay, did you, further, aside from being the pregnant lady, did you further describe or give a description to Mr. Pouillon?
A. I–I had asked him if he had been speaking to the lady who was wearing the red shirt and the blue pants, and he said he was talking to the pregnant one.
Q. Okay, was that, in fact, the outfit that Ms. Rowlison was wearing when you first came in contact with her?
A. Yes, it was.
Q. Okay, what–what then did–what, if anything, did you indicate to Mr Pouillon then?
A. He had actually asked what she had claimed he had stated, and I went into those remarks with him.

* * * *

Q. Deputy Shepard, what–what statements did you relay to–to Mr. Pouillon in relation to your investigation?
A. That it had been indicated that he had stated, to the effect of, are you carrying a baby or a bomb, and mentioned–he mentioned a child of evil.
Q. Okay, and what was his–what was his response to you?
A. His response to me was that terrorists will carry packages, bombs, any way necessary for them to accomplish to their goals, and that he believed it was quite possible that that's what she was doing.
Q. Carrying a bomb or . . .
A. She was working towards an end, and . . .
Q. Okay. Did you have any other conversation with him?
A. I had asked him if he believed that she may be pregnant, that him, speaking to her in the manner that he was, mentioning bombs, may harm her or her child. Mr. Pouillon stated that Mr. Rowlison had lied under oath, and if she would repent for the things that she had done, and everything would be right again.
Q. So, he was concerned about her having lied under oath.

A. Yes.
Q. Was he concerned, at that point in time, about espousing, if you will, an anti-abortion theme to you?
A. He did mention that.
Q. Okay.
A. That he had–that that was what he was there for. That was his goal, was to promote the anti-abortion campaign.
Q. Okay, did he indicate how he did that through indicating whether or not or through indicating to Ms. Rowlison, "Is that a baby or a bomb? Did he indicate how he was going to do that, if you remember?
A. I don't recall.
Q. Okay, but he had indicated to you that he had directed those baby or bomb comments directly toward the pregnant lady?
A. Yes.

* * * *

CROSS-EXAMINATION

BY MR. MCKAY:
Q. Isn't it true, Deputy, that–that he told you that she–when you–when he told you that she lied under oath, what did he tell you?
A. He had brought up an incident, I believe he had stated she was seeking a personal protection order, and that she had blamed him for a package hat had arrived on her doorstep and claimed it was a bomb, when it was not.
Q. Okay, and did that–was that consistent–I mean, did that make sense to you, that's why he was making those statements about a bomb?
A. I–I didn't know the whole story behind that incident, and I did return to Mrs. Rowlison and ask her about it.
Q. Okay, and she confirmed that–that this had happened, that she thought it was a bomb, and she had testified to that in Court.

A. Yes.
Q. But it wasn't?
A. Yes, yes.
Q. Okay, but she never told you that the first time she talked to you; right?
A. No, no, she didn't.
Q. In Mr. Pouillon's explanation as–when you–when you asked him or told him your–the question, or you asked him the question, did you know she was pregnant, and that this might hurt the baby? Didn't he also indicate something else to you about what she should do to make sure her baby is not harmed?
A. Yes, he stated that if she was that concerned about the child, she would stop working and go home and take care of the child.

* * * *

MR. GOETZ: Your Honor, at this point in time, the People rest.

* * * *

JAMES LAWRENCE POUILLON

called by the Defendant at 11:35 a.m., sworn by the Court Recorder, testified:

DIRECT EXAMINATION

BY MR. MCKAY:
Q. Would you state your full name and spell your last name for the record?
A. James Lawrence Pouillon, P-O-U-I-L-L-O-N.
Q. Mr. Pouillon, you're the defendant in this matter. Are you familiar with Young Oldsmobile Cadillac?
A. Yes.
Q. And how are you familiar with young Oldsmobile Cadillac? What was your first encounter with Young Olds?
A. Well, they–they have been a part of the business community, you know, for I don't know how long. But my first personal

contact was with them about six years ago, I believe it was.
Q. Okay, what was the reason that you had personal contact with them?
A. They, publicly, displayed Damion Frasier and George Geddis campaign political signs in front of their establishment.
Q. Okay, in your mind, what was wrong with them having – putting up a Damion Frasier sign?
A. Damion–Damion Frasier is openly pro-choice, openly preaches that killing babies is okay.
Q. Okay, what about the George Geddis sign?
A. George Geddis, now–at the time George Geddis's wife worked for Planned Parenthood. She was the outreach director, educational director of Planned Parenthood, and I believe, George Geddis, also, was–believes that killing babies is all right.
Q. That's–that's just your belief of what . . .
A. that's my belief, and based on the–based on–well, I know for a fact that Karen Geddis worked for Planned Parenthood.
Q. Okay, all right.
A. I know for a fact Damion Frasier is pro–was pro-choice.
Q. Okay, what did you do after you observed those political signs? What did you do next?
A. I went to Young Oldsmobile Cadillac dealership.
Q. Now, when is–this is back when...in 19–you said six years ago?
A. Whatever six years ago. More than six now.
Q. So, '94 or–it was during in a campaign years?
A. Yeah, yes.
Q. Okay.
A. Damion Frasier and George Geddis were running for a public office.
Q. And you went to Young Oldsmobile Cadillac? Did you speak to anybody?

Q. Okay, who did you talk to? Do you remember?
A. Pierce. What's . . .
Q. Pierce is his last name.
A. Yeah...Gene, is it?
Q. Okay, did you talk to anybody else?
A. I think I talked to Tony that time.
Q. Okay, and then what . . .
A. I introduced myself and told him who I was and what I was about. That I'm–I'm with operation rescue. That I work for General Motors, and that I'm a Christian, and I'm pro-life, and that I'm offended. That I was offended that they publicly endorsed pro-choice candidates.
Q. Okay.
A. And used their business to publicly endorse pro-choice candidates.
Q. Then what happened after–did you leave at that point?
A. And I asked them, because they profess to be Christians, and I'm a Christian. And I asked them, that I would appreciate it, since I also work for General Motors, I would appreciate it if they would take the signs down.
Q. Okay.
A. And they said they would think about it. And they–what is his name...Pierce was nice about it.
Q. Okay.
A. I said, "Okay, I'll come back in an hour." And so I left.
Q. So, you left at that point? Did you come back in an hour?
A. I came back an hour later, and I walked into the showroom again to find out what their answer was going to be, and was greeted by Mr. Pierce again.
Q. Okay.
A. And he told me, "Get the hell out of here."
Q. Were–were the signs still up on the property?

A. yes, they were.
Q. Okay, did you–did you speak to anyone else that second time you went there?
A. So, I left. I said, "Okay," and I left.
Q. Okay, and then what did you do after–after that?
A. I went and got a–I went and got a sign, one of my signs.
Q. Okay.
A. And I started picketing.
Q. Where were you located when you started that first time?
A. In front of their showroom on the south side of M-21.
Q. Okay, so on their side of M-21, right in front of the building?
A. yes, on the public right of way.
Q. Okay.
A. And that's how this all started.
Q. Okay.
A. And that was six years ago.
Q. So, they kept the signs up; is that right?
A. Yup. And that's when . . .
Q. Now, when–when was it, approximately, that you moved your–so, have–how often have you protested or rescued out in the location around Yung Oldsmobile Cadillac?
A. At that . . .
Q. One whole six year time from – since then?
A. Have I been going – do you mean just here?
Q. to that location, yes.
A. Just there?
Q. to that – yes, to that location.
A. Oh, I've been all over this country doing this.
Q. Okay, but at that location, you've been going back there since then; right?
A. yes, on and off for the last six years.
Q. And you–why is it that you rescue, or you protest at all different

locations around the country? Why is that?
A. Why do I go all over the country?
Q. Yeah, what's your purpose?
A. To get the–to get what I believe–message out to the people.
Q. Okay, about abortion?
A. That's right. To show them the truth about abortion.
Q. Okay, now, at some point in time, did you move–the allegations here are June/July of 2000, the allegations were you were across the street?
A. At...
Why were you across the street?
A. It's safer for me to be there. I'm–it's physically safer, so I don't get physically abused by Young Oldsmobile Cadillac dealership.
Q. Has that been a problem in the past?
A. yes. They . . .
Q. Do you mean by their employees?
A. Well . . .
Q. What do you mean you've been abused by them?
A. I was physically assaulted by their sprinkler system.
Q. Okay.
A. They would turn their sprinkler system on me when I was on the south side of the road. And so I would be physically assaulted and bettered by their sprinkler system. They verbally – verbally would abuse me and attack me and my family. And . . .
Q. So, you made the determination that it was better for you to be across the street; correct?
A. It would be better for me, and it would also be better for them. It would be physically safer for me to be across the street, plus there'–it's a big parking lot area right there, and it gives the public a better chance to stop and talk to me, and it gives my friends a chance to stop and pray with me, and it gives anti-choice people a

chance to stop and talk to me. And we have–we have some really good debate across the street about abortion.

Q. Where is the parking lot you're talking about? It's just to the east of the Ponderosa? Is that where you're talking about?

A. Yes, it's all–that's all one big parking lot, all the way around Ponderosa. It's–that's a mall.

Q. Okay, in relation to Ponderosa, on–in June and July, did you only stand, basically, in one place?

A. Yeah, under the – the American flagpole.

Q. And do you know in relation to the building of Ponderosa, where that is? Is it left or right, in the middle?

A. It's – it's right straight across from the driveway. So, see that dot . . .

Q. Okay.

A. Move the dot to the–right there.

Q. Move it over to the right?

A. Yup.

Q. To the–to the east?

A. Yup. Yeah, because it lines right up with their driveway. It's right under the flagpole.

Q. Okay, and is there also a light at–at that corner at that location, somewhere?

A. Yes, a traffic light, stop light.

Q. Does that–how does that effect your–your ability to get your message out, having that light there?

A. Well, the cars stop and back up, and they have more time to read my sign. they have more time to look at the picture of the dead babies. And it gives me time to communicate back and forth with them.

Q. So, in June and July of this year, was it your intent–did you have some kind of plan to go out and to hunt down or stalk Lori Rowlison?

A. No, as a matter of fact, in June and July, I was, specifically, picketing against Judge Clatterbaugh.
Q. At that location?
A. At that location, yes.
Q. Okay, why is that?
A. He was up for re-election, and he's a baby killing Judge, in my opinion.
Q. Now, the allegation...let's deal with the allegations that–that were made. There was witnesses, including Ms. Rowlison, that–that indicated that you made the statement, "Is that a baby, or is that a bomb?" Is that correct?
A. Yes.
Q. Okay, and why would you say that? Why did you say that?
A. Well, she accused me, in Circuit Court, of placing a bomb on her porch of her house, and I never did. So, I just–it's just a fair question. I believe it's a legitimate question to ask her if that's a baby, or if that's a bomb.
Q. But was it because of that statement she made in court?
A. yes, yes, that's–yes.
Q. If she hadn't made that statement in court, would you even have made–said anything about a bomb?
A. Probably not, no.
Q. Do you, normally, tell people that God's going to drop bombs on them or anything?
A. yeah, yes, but not at–I don't always use them words.
Q. Okay, when you use the words, "God's going to drop a bomb on you," what do you mean by that?
A. Well, I believe, in fact, God did drop a bomb on her and her–the dealership.
Q. How is that?
A. Well, I believe that since this happened on a Saturday, prior to this, just before this happening, I believe her and the dealership and

the lawyers got together and plotted-plotted against me, conspired to come up with this scheme about me stalking her.

Q. Okay.

A. But without them knowing that the Friday before that, two days just before that, without their prior knowledge, the Federal Judge in Kalamazoo, Michigan, just made a ruling that the Michigan Stalking Law is unconstitutional because it's being fairly misused to stop people like me from expressing–using their freedom of speech.

Q. Okay.

A. They didn't know ...

Q. Now, you didn't know–you didn't know about that either?

A. No.

Q. Okay.

A. But I gave them fair warning to be careful because God will drop a bomb on them.

Q. So, when you say God's going to drop a bomb on you, were you talking about a literal bomb?

A. No, something like this right here. He dropped a bomb on their whole case.

Q. So, you're talking about–what do you mean?

A. He just blew . . .

Q. That's a phrase that I've–that everybody's heard before.

A. I believe . . .

Q. "Drop a bomb;" what does that mean?

A. I believe–I believe because of this Federal Judge's ruling in Kalamazoo, Michigan, it has just blown this case all apart.

Q. Okay, but we're talking about–what does it mean in your mind to drop a bomb on somebody? Is that . . .

A. To blow up their evil plans.

Q. Okay, but is it, also, some type of surprise or something?

A. This . . .

Q. If somebody dropped a bomb on you, how would you describe

that?

A. This was a big surprise when this ruling just came out.

Q. What about the statement, "Liar, liar," or "Liar, liar, pants on fire."

A. Hell, that's a song I learned when I was a little kid when someone would tell a lie, you'd sing songs, you know. Liar, liar," or "Liar, liar, pants on fire."

Q. Okay, why–why would you say that ...

A. Because they're liars.

Q. ... outside Young Oldsmobile Cadillac.

A. Young Oldsmobile tells horrendous lies about me and my family.

Q. Okay, did you ever pick anybody out–pick anybody out and address them by name at Young Oldsmobile Cadillac?

A. Yes.

Q. Who?

A. Tony.

Q. Okay, and what–what would you say to Tony?

A. I would tell Tony, "Tony, my daughters are not sluts."

Q. Why would you say that to Tony?

A. People working for Young Oldsmobile Cadillac call my daughters sluts.

Q. They said ...

A. And they are liars. My daughters are not sluts.

Q. Now, you're talking about one–an incident they–they said this to your face or something?

A. Yes.

Q. Okay.

A. That's another reason why I'm across the street, to make it harder for them to come up to my face and tell me what sluts my daughters are.

Q. Okay, so, was–was your purpose–your reason for being there

throughout the months of June and July of 2000, was that the same purpose and reason you've been there for the past six years?
A. No.
Q. What was your purpose for being there in June and July?
A. To picket against Judge Clatterbaugh.
Q. Okay, then–then wh wouldn't you say–why wouldn't you make statements about Judge Clatterbaugh? Why were you addressing employees of Young Olds?
A. Well, they're–they're–they're just a second benefit–you know, a secondary part. My main purpose for being there June and July was to picket–to openly oppose Judge Clatterbaugh.
Q. Okay.
A. Because it's such a good location in the traffic, the volume of traffic.
Q. So, the fact that they would come out, and you could make statements to them was just an added benefit?
A. An added bonus.
Q. Okay, have you ever sent Ms. Rowlison any mail or called–ever called her on the phone?
A. No.
Q. Ever contacted her other than saying things when–when she's outside of Young Olds?
A. No.
Q. Have you ever intended or willfully tried to get her to suffer emotional distress?
A. No.
Q. Now, apparently your–you don't still picket or protest across from Young Olds; is that correct?
A. When?
Q. Right now.
A. I'm not allowed to.
Q. Why is that?

A. Judge Dignan had–I'm out–well, I guess the charge has been dropped, but anyway, I'm on bond, and as a condition of my bond, I can't get within a quarter mile any direction of Young Oldsmobile Cadillac.

A. Okay, is there–are there any other court orders that prohibit you from–the reason why you wouldn't be there today?

A. No.

Q. What about a personal protection order?

A. That's just not to have–I believe, not to have any personal contact with Mrs. Rowlison.

Q. Okay, so the PPO, the personal protection order, doesn't prohibit you from being there; correct?

A. I don't . . .

Q. Just speaking to her?

A. Right, I–I believe that's how it is, and I can't have any direct–direct contact with Lori Rowlison.

Q. Okay, what about–Ms. Rowlison testified that you said something about her child being a child of evil?

A. No.

Q. What was–what did you say?

A. No, I asked her if–in my opinion, she's pregnant with–she's pregnant with evil.

Q. What do you mean by that?

A. In my opinion, she's still pregnant today.

Q. What do you mean by that?

A. She's pregnant with evil. It's in–it's like–it's in the Bible.

Q. Okay, so that's a biblical concept?

A. Yes, being pregnant with evil. Yes, when you tell lies, see, that comes from your heart, an evil heart. So, it's called being pregnant with evil.

Q. How far away in June and July–you, basically, you said you stand by the flagpole; is that correct?

A. Yes.

Q. How far away is that? Can you give us an idea of how far from where you're standing to the front door of Young Oldsmobile Cadillac?

A. A hundred yards. I would–it's got to be close to a hundred yards.

Q. So, you're–you're saying like a football field? Is that how you–how do you gage a hundred yards?

A. Boy, 75–I don't know. I'm a long ways away from their front door.

Q. Did you use any megaphones or speaker system or anything like that?

A. No.

Q. Did anybody ever confront you during June and July? Did anybody ever come up to you and get in a fight with you because of something you said or threatened to hurt you during that time...during this June and July at Young Oldsmobile Cadillac?

A. I don't remember–remember the assault. Were the . . .

Q. So, apparently, there was–there was a previous assault. Was it at that location?

A. Yes.

Q. Or somewhere else?

A. Well, no, because – it originated there, but it ended up – where the people were spitting on me, spitting on my van.

Q. Okay, but was anybody at Young Oldsmobile Cadillac?

A. Oh, no, no. That was other . . .

Q. Just passerbys?

A. Other people.

Q. People passing by; right?

A. Yup

Q. So, they weren't doing it because of anything that you said to them, any fighting words? You weren't trying to pick a fight with

somebody, and they–they tried to attack you?
A. Unless you call being fingered an assault.
Q. They–they would finger you?
A. Young Olds–employees of Young Oldsmobile Cadillac would finger me. They would, for six years, now, they've been doing that. They would grab their genital areas and shake their genitals at me. But that's...
Q. Okay, but in your–in your mind, that's their free speech right; correct?
A. Yeah, they–that's right. See, they have the right to do that, also. They don't have the right, I don't believe, to call my daughters sluts and ...
Q. Has–let me ask you this, Mr. Pouillon.
A. Yes.
Q. Other than the PPO that Ms. Rowlison obtained against you back in .87, '88; do you recall that, the personal protection order, the first personal protection order?
A. Yeah, yeah.
Q. Other than at that point in time, has she ever contacted you or, specifically, told you to not address her or not talk to her?
A. To the best of my ability and knowledge, she's never spoke a single word to me, not to me, personally.
Q. Okay.
A. She's, you know, spoke about me in court. But to the best of my knowledge, she hasn't ever spoken one single word to me all this time, not one single word has she ever spoke to me.
Q. And is the only time you've spoken to her, when you were in the vicinity of Young Oldsmobile Cadillac, during your rescues or protests against abortion?
A. Yeah.
Q. That's the only time you've ever spoke to her?
A. Well, yes, and I don't do it directly even to her. I've

never–I've never called her, you know, by name. I made a general statement. The one I directly talked to is like Tony. I–when I want to be speaking with Tony, I use the name Tony.
Q. Okay.
A. So, when I say something that I direct towards Lori, it's–it's–I–it's never meant to be a direct total statement just to her. It's open to anyone.

MR. MCKAY: I have no further questions. Thank you.

CROSS EXAMINATION

BY MR. GOETZ:
Q. Mr. Pouillon, you had indicated that you had said to Ms. – Ms. Rowlison, "Is that a baby, or is that a bomb;" is that correct?
A. As a general statement, yup.
Q. Okay, did you–did you make that statement to Tony Young?
A. I–I think Tony was–he's heard it. It's a statement that I would make even light right now here, to anyone.
Q. I'm not saying whether–whether he may have heard it. I'm saying, did you direct to Tony Young the statement, "Is that a baby, or is that a bomb?"
A. I directed that statement at Young Oldsmobile Cadillac dealership.
Q. Okay, okay. Did you direct the statement, "God is going to drop a bomb on you," to Lori Rowlison?
A. Again, that was a statement made to anybody at Young Oldsmobile Cadillac dealership.
Q. O.K., not to–just–not to just any–not to just–or not to Ms. Rowlison, just as a general statement?
A. That's right.
Q. Okay, did you–did you–did you make a statement to Ms. Rowlison that you had better watch out?
A. Again, not specifically to her, a general statement.

Q. Okay, you had an occasion to speak with Deputy Shepard here in relation to this case; did you not?
A. Yes.
Q. And isn't it true that you told Deputy Shepard, that in fact, you were speaking directly to the pregnant one, as she put it?
A. I don't believe I said directly to the pregnant one because I've never made a direct statement to Lori Rowlison.
Q. Well, did not – didn't Deputy Shepard indicate to you, that – qualify by saying the one in the red and blue outfit?
A. Was I talking to her?
Q. Well, I'm asking–I'm asking you, Mr. Pouillon.
A. Yes, that was the only person she asked.
Q. Okay.
A. If she would have asked, did that statement apply to Tony, I would have said yes, also.
Q. Okay.
A. It applies to anyone that hears that statement, sir.
Q. Okay, regardless of whether they're physically pregnant or not?
A. Regardless.
Q. Okay, and in fact, you–you made the same statement to Trooper Llerena here, that you were directing your comments to the pregnant one; correct?
A. And they're–yes, but not specifically to her, to anyone that can hear that statement.
Q. So, if Trooper Llerena testified as he did that–that you were making the statement directly to Lori–Lori Rowlison, he'd be incorrect?
A. Yes.
Q. And if Deputy Shepard, who testified here in court today, made the statement that you were directing your comments to Lori Rowlison, she would be incorrect?

A. Specifically?
Q. Yes.
A. Yes.
Q. Okay.
A. It's a general statement for anyone to hear.
Q. Okay, Ms. Rowlison had on prior occasions gotten a personal protection order against you; did she not?
A. Prior..once, yes.
Q. Okay, she didn't want you to have any contact with her; did she?
A. That's what she wanted, yes.
Q. Okay, so you knew she didn't want to have any contact with you; isn't that true?
A. Absolutely.
Q. Okay, is it fair to say, Mr. Pouillon, that you were upset with Ms. Rowlison for making the statement a few years prior in relation to a package that she found on her porch, she had thought you may have placed a bomb there.
A. Yes.
Q. Okay, so you–and this angers you to–to today; does it not?
A. No.
Q. No? It angered you back when you were making these comments back in June and July?
A. No, it just upset me.
Q. Okay.
A. I don't like to be lied about.
Q. Okay, Mr. McKay had asked you why you were making these statements about the baby or a bomb, and you had indicated to him that it was in relation to this–this prior court case; correct?
A. Yes.
Q. That doesn't have anything to do with your–your attitudes

towards abortion; does it?
A. What do you mean?
Q. Well, you were–you were saying these statements to Lori Rowlison because you were angry with her for making those statements in court; is that correct?
A. That's incorrect.
Q. Okay, what's incorrect about it?
A. I'm not angry at her
Q. Okay, but you were making those statements about the baby or the bomb because she said those things about you in court; correct, whether you were angry or not?
A. Yes.
Q. Okay, and that didn't have–that particular thing didn't have anything to do with–with your abortion campaign; correct?
A. Incorrect.
Q. Incorrect?
A. Yeah, that's why I'm–that's one of the reasons I'm there picketing there.
Q. Okay, I understand–I . . .
A. Because it's all about abortion, sir.
Q. I understand it, but you were–you were upset about her making statements about you in court; is that true?
A. Yes.
Q. Okay, and that's why you were making statements toward her about the baby and the bomb?
A. That's one of the reasons.
Q. Okay.
A. There's other reasons. I'm trying to get her to repent.
Q. Okay.
A. Them are lies. She needs to stand accountable for them.
Q. Mr. Pouillon, let me ask you this.
A. Would you let me finish?

Q. Well, why don't you just wait and answer my questions, okay. I'm not trying to cut you off.
A. I was. I was trying to answer your questions.
Q. I know you were. Let me ask you this. Did you have to raise your voice, when you were over here at Ponderosa, did you have to raise your voice in order to get people to hear you over in young Olds parking lot?
A. To some degree. Depending–it depends how far away they are.
Q. Okay, and you were pretty far away; correct?
A. Sure.
Q. Is it fair to say that you had to yell?
A. No, Officer–Officer Stacey...I can't remember her last name. Officer Stacey and I, we carried on a conversation from the–you know, and I don't think she had to yell her guts out.
Q. Let me ask you this. Were you talking in the same–the same volume that you're talking with me here today?
A. No, there's a lot of–it depends on the road traffic.
Q. Okay, let's say there's a lot of road traffic, which the tape seems to bear out.
A. Yeah.
Q. Were you talking to me in the same volume that you were talking to her making those statements?
A. Well, I would probably–if the semi truck was going by, and I'm making that statement, and I want you to hear it . . .
Q. You're gong to yell?
A. I'm going to raise my voice.
Q. So that people can hear you?
A. That's right.
Q. Is it fair to say that you made the baby and the bomb statement, and, "You better watch out, God is going to drop a bomb on you," on more than one occasion?

A. Yes.
Q. In fact, it was several occasions; wasn't it?
A. Yes.
Q. On–on multiple different days?
A. Yes.
Q. Okay, and each time that you made those comments to the – to the whole world in general, Lori Rowlison just happened to be in the parking lot on each and every occasion; isn't that true?
A. No.
Q. No?
A. Not every time.
Q. Most of the times?
A. No, I would say it–just–I'd say it all the time.
Q. Let me ask you this, Mr. Pouillon, what do bombs have to do with abortion rights?
A. What do bombs have to do wit abortion rights?
Q. Right. Do they have anything to do with abortion rights...bombs?
A. Abortion rights?
Q. What you proclaim your whole thing...I'm just asking you, what do bombs have to do with the abortion issue?
A. What do–in my case?
Q. In your–what do bombs have to do with the abortion issue?
A. In my case?
Q. I'm just asking you a question, sir.
A. Well, bombs have something to do with the abortion issue.
Q. Okay.
A. They bomb clinics around this country.
Q. Okay.
A. Evil people that bomb clinics, I–I disagree with.
Q. People–people that–that hold the same viewpoint you do, have bombed...

MR. MCKAY: Objection, your Honor. I don't think that this is even relevant. He's getting into the–he's trying to get the witness to speculate that other people that–that bomb clinics have the same viewpoints as the defendant. I think it's improper.

THE COURT: I think the witness has already testified he doesn't have the same opinions as those people. Whether it should be stricken or not, I don't know. But considering the leeway that was given on direct, and the issue–the whole–where this is all going about bomb talk, I think it's–I think it's proper, and the objection is overruled.

MR. GOETZ: Thank you, your Honor.

BY MR. GOETZ:

Q. Mr. Pouillon, my question once again was, people that are in the same position as you are against abortion, have, literally, used bombs to blow up abortion clinics; have they not?

A. No.

Q. They have not?

A. No, not–not people like me haven't.

Q. People that are against abortion in general, though?

A. Well . . .

Q. Would you agree with that?

A. No, I wouldn't.

Q. Are you saying that people–okay, I'll strike that part. Would you agree with me that abortion clinics are the target of bombs?

A. Abortion clinics?

Q. Yes.

A. Yes. But they're not teacups.

Q. When Mr.–when Mr. McKay was questioning you, he asked you a question in regard to what "Is that a baby or a bomb," meant, and I believe, or was it, I'm sorry, "pregnant with evil," and you indicated to him that it was to blow up evil plans.

A. Pardon me?

Q. Maybe I didn't–maybe I didn't phrase it, correctly. Do you remember–do you remember the conversation about pregnant with evil coming from the Bible, that you were talking to Mr. McKay about?

A. When?

Q. Here in court today.

A. Yeah, I know what the Bible says about being pregnant with evil.

Q. Okay, I know you know what the Bible says. Right, and we talked–you talked to Mr. McKay about that at a little bit of length here on direct examination, did you not?

A. Yes, probably, if he asked the–I thought it was you.

Q. Okay, and do you recall your–do you recall your response being that it was in reference to blowing up evil plans?

A. Evil what?

Q. Plans.

A. Yes. Okay, I believe these people have gotten together and have conspired with evil plans against me.

Q. Okay, and you were–you were angry about that; correct?

A. I still am angry about it. I don't like being here today.

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THE COURT: First, I'm going to make a finding of fact. Then I'm going to go through the facts as they relate to the elements of the crime, and then I'm going to go through this as it relates to the First Amendment.

I don't think there's a whole lot of dispute on the facts, but I'm required to make a finding of fact, which I'll do first. I think that–there's a finding of fact, the defendant has picketed at Young Olds Cadillac in some form or another since some time in 1994.

Young Olds Cadillac has on more than one occasion brought suit to stop him from picketing, and he's continued to do so. The Court of Appeals has ruled that he can continue to picket there, I

would add, rightfully so.

That Ms.–Ms. Rowlison has on a couple of–on at least two occasions, sought PPO's against Mr. Pouillon. that Mr. Pouillon believes that Ms. Rowlison lied in seeking a PPO against her (sic). Further finding that Mr. Pouillon was picketing in front of Young Olds Cadillac, specifically, in June and July of 19–excuse me; of the year 2000.

That Ms. Rowlison, was, approximately, seven months pregnant during that time. During that time, specifically, he was, repeatedly, yelling, "Liar, liar, pants on fire." In fact, we listened–the Court–there was a tape played. Actually, you could hear him yelling from, and the finding of fact, further, is that he was across the road in front of Ponderosa, yelling back across the road at–at people at the dealership.

Actually, listening to the tape, it sounded–it kind of sounded like what our stereotype of being in a mental hospital...it kind of sounded like someone was mentally ill, yelling. I'm not making that finding, but that's certainly the way it sounded.

Also, it's clear that during that time he was yelling when Ms. Rowlison left the building, he was yelling, "Is that a baby or a bomb?" He, repeatedly, yelled that 30 to 40 times, I believer, at least–and on 15 to 20 different occasions. Said that that baby's a child of evil. God will drop a bomb on you.

It's clear that these specific statements were directed, specifically, at Ms. Rowlison, based on the testimony of the officers, from interviewing Mr. Pouillon and from just the very nature of the statements themselves. It's a very logical conclusion based on all the testimony, that these were directed, specifically, at Ms. Rowlison.

I think it's very clear from the testimony that these statements made Ms. Rowlison feel intimidated, harassed, and did cause her emotional distress.

He, also at one point, said he was God's messenger. Because of these statements, she was afraid that actually there might be some sort of bomb, and suffered emotional distress.

Both parties have, and this took place in Shiawassee County in June and July of 19–excuse me, 19–2000...the year 2000.

We've all been through the elements of stalking. First, that the defendant committed two or more willful, separate, and non-continuous acts of unconsented contact with the complainant.

Second, the contact would cause a reasonable person to suffer emotional distress.

Third, that the contact caused the complainant to suffer emotional distress, and fourth, that the contact would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and fifth that the contact caused the complainant to feel terrorized, frightened, intimidated, threatened, or harassed.

And harassment means contact–conduct directed toward a victim, that includes, but is not limited to repeated or continuing non-consented contact that would cause a reasonable individual to suffer emotional distress, and that actually cause the victim to suffer emotional distress.

Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

Looking at the elements and–and the facts of this case, clearly, the defendant committed two or more willful, separate, non-continuous acts of unconsented contact with Ms. Rowlison.

Yelling, specifically, at her from across the road is unconsented contact. Considering the fact that one two–on at least one occasion before this, she had sought a PPO. It was very clear that she didn't like this contact. Second, this contact would cause a reasonable individual to suffer emotional distress.

I guess, there's a side issue here. Is–is–do we take our victims

as we find them, seven months pregnant...probably. I would think that any kind of bomb talk as it related to someone's unborn child could be very specifically the kind of talk or the kind of threats that would make someone emotionally upset.

I, obviously, have never carried a child. I am the father of three children, and I know the stress and concern that people have about their unborn children. It's–that–this kind of talk as it relates to someone–as it relates to someone's unborn child would cause a reasonable individual to suffer emotional distress.

Third, that the contact caused Ms. Rowlison to suffer emotional distress. She testified she was upset and nervous, didn't want to stay home alone, was worried about going places. Clearly, it did.

Fourth, that the contact would cause a reasonable person to feel terrorized, harassed, intimidated–terrorized, frightened, intimidated, threatened, harassed, or molested. And again, this is–is specific threats, specific continued yelling of, "Is that a bomb, or is that a baby? that's a child of evil. God will drop a bomb on you," coupled with the fact that Mr. Pouillon, at some point, had said he was a messenger of God, would certainly make a reasonable person feel each of the–feel terrorized, frightened, intimidated, threatened, harassed, or molested.

And fifth, that the conduct–contact caused Ms. Rowlison to feel, and I think the–she felt frightened. I think she felt harassed. I think she felt threatened. I find that. I find, as far as–as–irrespective of the constitutional issue, I find that the People have met their burden on each of the elements as far as guilt beyond a reasonable doubt.

The issue then becomes, is this constitutionally protected activity. Clearly, the Constitution protects all sorts of activity that many people find offensive.

The Constitution allows us to do anything, within reason–within pretty much anything. It allows us to be jackasses, if we choose.

It allows Mr. Pouillon to protest abortion. It allows the people who don't like to wear motorcycle helmets to do that, and so on.

And the Court of Appeals has ruled that he can picket there, and rightfully so. But the question becomes, and I think everyone in the room, we're all–we all know where the real issue is. At some point does this activity go beyond what's constitutionally protected?

Clearly, the Constitution says that Mr. Pouillon can picket for the anti-abortion cause, even if his–if his conduct allows him to engage in conduct that is, actually, counter to his and hurts his cause. But if he chooses to do it that way, then that's his–his right, and he can do it.

In this case, he has–in this picketing, he has singled out one particular individual, and he has a reason, according to the facts, and the reason is that he believes that, and if I didn't specifically, include that in my finding of fact, I should. H believes that she lied in seeking a previous personal protection order, and he's upset with her.

He said he wasn't angry with her, but he said–by his own words, he was upset with her because he believes she lied, and he's singled her out. He may have, on occasion, singled out another individual there, but–but for purposes of this trial and these facts, he singled her out, specifically, with very specific language that would, certainly, make someone feel terrorized and harassed.

This is not about abortion. This particular activity–this particular activity is simply about yelling and screaming at somebody, about harassing and terrorizing somebody. And I have no idea if–if this was a situation where this was a doctor who was performing abortions, maybe it would be a different situation, but it's not.

It's someone who is trying to sell cars at a dealership, and whether they put up signs at some–at some point–well, clearly, they did put up signs at some point for a candidate, or at least one

candidate who was pro-choice, there's nothing in this conduct, as it's directed towards Ms. Rowlison, that has anything to do with abortion or protesting abortion.

This is simply about someone, namely, Mr. Pouillon, harassing, terrorizing, and intimidating her. This goes beyond what's protected by the First Amendment, and I find him guilty of stalking.

And I also don't believe that in any of these offenses, you have gone to jail. The sentence of the Court is five years probation. You're not to violate any law of any unit of government during that time.

Most importantly, you're not to have any contact with Ms. Lori Rowlison in any way, shape, or form. You're not to phone her, no letters, no messages, you're not to be within earshot of her. You're not to appear within her sight, including at her work.

Now, if–if you can figure out when she's not there and want to picket at Young Olds when she's not there, I don't believe I have the authority to stop you, and I'm not–that's not what my–what my order of probation is. My order of probation has nothing to do with your protesting or what you protest.

You've been convicted of stalking of Ms. Rowlison. My order of probation relates to your conduct and your activity around her, or in the negative, you're not to be around her.

It's $800.00 fine and costs, and I sentence you to serve the first 30 days of probation in the county jail. This is a non-reporting probation. No–you're not going to report. You're not going to need to report. You're just going to need to know, and you'll be given this in writing, that these terms apply for the next five years.

F1

STATE OF MICHIGAN

IN THE 66TH DISTRICT COURT
FOR THE COUNTY OF SHIAWASSEE

THE PEOPLE OF THE STATE OF MICHIGAN, File No. 00-ST-1287

v.

JAMES L. POUILLON,
Defendant.

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MOTION

BEFORE THE HONORABLE WARD L. CLARKSON,
DISTRICT JUDGE

Corunna, Michigan - Tuesday, November 21, 2000

THE COURT: This is People of the State of Michigan v. James Pouillon, 00-ST-1287. It's a charge of stalking, and People of the Statae of Michigan v. James Pouillon, 00-ST-1289. It's a charge of disturbing workers and stalking. Mr. McKay has filed a motion to dismiss in both of these files. The People have filed a response, and this is the time set for any oral argument that either party wishes. Mr. McKay, go ahead.

MR. MCKAY: Thank you, your Honor. If I may address, basically, my arguments on both files in reference to the stalking offense, they're going to be–the legal argument is going to be the same. The facts are different because it's a different incident with

a different police agency. But that way I won't have to duplicate the arguments on that. Then I would address count I on file number 1289, separately, because that's a distinct offense.

First of all, in regards to the–in both cases, in regards to the stalking count, which is count I in 1287 and count II in 1289. The first argument, your Honor, in our–in our brief, and that we're making is that–that the stalking statute does not apply to the conduct that's–that's being charged here.

If you look at–and basically, it stems from the fact that in the definition of the stalking, it requires harassment, and harassment is defined as conduct directed toward a victim that includes but is not limited to repeated or continuing unconsented conduct–contact that would cause a reasonable individual to suffer emotional distress.

It goes on to state in the next sentence, harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

So, here I think that it's clear that the legislature was very careful, or they tried to put words in there that–to– instruct the prosecutors and the Courts that constitutionally protected activity should not be charged as stalking.

So, the question becomes, in Mr. Pouillon's speech in these cases, and I believe it's purely speech, was it constitutionally protected activity?

First of all, in file number 1287, and what I'm asking the Court to do here is, I believe, this is a legal question, and maybe the Court can clarify. If–if the case goes to a jury trial, which is set, I believe, for next week. The matter–I believe that the Court has the obligation to–to determine whether this is constitutionally protected activity, and that's why we brought the motion and this argument.

However, if the Court feels that that's a fact issue, then I think we need to carefully draft jury instructions to enable them, because I think it's going to be difficult for a jury to-to know or even be able

to comprehend what constitutionally protected activity is.

But in 1280–file number 1287, the facts here, and I don't know if the Court has had a chance to review the police report . . .

THE COURT: No, I would not have reviewed the police report.

MR. MCKAY: The facts here, your Honor, and I'd like to just go through them, briefly, is that–this is Sheriff's–Shiawassee County Sheriff's Department report with Deputy Stacy Shepard. She indicates that she arrived at Young Oldsmobile on, this is Saturday, July 15th of 2000, and spoke with a Lori Rowlison.

Lori Rowlison asked me if I saw him standing across the road. She meant James Pouillon. I told her yes. She then proceeded to tell me that she arrived at work this morning around 8:30 hours. She did not see Pouillon outside until 10:30 hours, she believes. Shen I asked her to tell me what happened, she started to cry. she apologized and told me what happened.

She went on to–she went out to the car lot to conduct business. She says that Pouillonb began yelling phrases at her. She said he yelled, "Mama, mama, mama," at her. He would ask her, "Is that a baby or a bomb," and "That is the child of evil." Rowlison is pregnant. She said that she is in constant fear when he shows up across the street.

She said that he came on to the lot to complain about where some of the cars were perked and about inflatable whales that were–that were using as a sales promotion.

She said that when she saw him outside her window with his sign, she went into–into the back and hid. She is afraid he is some–he is the kind of person that could snap and harm her, her kids, co-workers, or customers.

It goes on to say that there was–she played a cassette tape that she recorded. But basically, she went out–she went on to say–tell the officer that–the officer indicates the tape is hard to hear in

sections because of the traffic. I could make out portions where a voice sounding like Pouillon, yells, "Liar," and calls, "Mama." There's another section where he says "Child of evil."

So, I think, clearly, those are the–those are the facts as to–if–and at this point, for the purpose of this motion, we're not disputing that. I think what we're asking the Court to take is given these facts, this is constitutionally protected activity. There's nothing that amounts to stalking in what the allegations in the complaint are.

At trial, we dispute that some of these allegations–that some of these facts actually occurred, but for purposes of this motion, I think it's clear that given these factors, there's no–Mr. Pouillon never went to a residence, never followed her anywhere. And as you know, the history from–you may know between Jim Pouillon and Young Oldsmobile Cadillac, this was–it's been an ongoing situation where they supported pro-death political and judicial candidates.

Mr. Pouillon has been picketing there at that location for in excess of six years. This is, certainly, an organized protest. And I think I–I mentioned in the–in the brief, the fact that the NAACP v. CLAIBORNE HARDWARE, that the right to non-violent picketing and protesting and boycotting against businesses is well established in the First Amendment jurisprudence. And that comes directly from Claiborne Hardware, and the Michigan Court of Appeals has adopted–not adopted, but they–in a previous case between Mr. Pouillon and Young Oldsmobile Cadillac and the Court of Appeals, they cited that that language that was used in Claiborne Hardware in throwing out an injunction that the 35th Circuit had placed against Mr. Pouillon.

This is, certainly, constitutionally protected activity. The fact that it may not have been nice, that a reasonable person may not have said that, does not mean that a reasonable–that anybody

could–could not have said it. In other words, this is protected activity, protected speech. He never followed her anywhere. He never did any of the other–other than appearing at her place of business, which he has sone for in excess of six years. He never did any of the things that–any of the other things that stalking prohibits.

For example, I'm trying to find that–in the statute–in the stalking statute, itself, it defines unconsented contact as following or appearing within the sight of the individual, approaching or confronting that individual in a public or private–in a public place or on private property.

He's never gone on to–at least, in–in these facts, he's never gone on that side of the street on the property of Young Oldsmobile Cadillac. Appearing at her work place, that's only been done because of the fact that he is picketing against Young Oldsmobile Cadillac.

He's never contacted her by phone, by mail, sending mail or electronic mail. He's never placed an object or delivered an object to the property occupied by her. So, clearly, all we have is comments that are made by Mr. Pouillon across–from across the street. He was in front of Ponderosa on the north side of the street.

Obviously, she's in the car lot on the south side of the street at Young Oldsmobile Cadillac. There's no amplification of his voice, and the fact–I think, the only–the only issue here is they're saying that because of this–this pure speech, that the statements that he made to her, that he was somehow stalking her, and that that's a violation of the law.

In the–in the other file, file 1289, that was–that was a complaint and report done by the Michigan State Police. The date on that offense was, apparently, June 29th of 2000. Here, it's–it's–basically, the same thing. There was comments in the police report that Ms. Rowlison indicated to the police that he

shouted, "Is that a baby or a bomb?"

Again, there was a tape recording taken. But it looks to me like the only–the only time–and there were–there were other witnesses that indicated that they were upset with–with the fact that the–the police were not doing anything to get Mr. Pouillon out of there.

In–in the police report, it indicates in the evidence, the tape that the officer listened to, he states on–and this is, basically, for a week prior to the incident, 6/20 of2000, the shouts heard are, "Liar, liar, liar, liar, pants on fire." Again, on 6/20, "Liar, liar." On 6/22, the statement is, "Is that a baby or a bomb?" On 6/22, again, "Is that a baby or a bomb...liar, liar," and on 6/28, "Liar, liar."

These–these are purely speech, your Honor. There's no conduct. He didn't follow Ms. Rowlison around. Again, this is just constitutionally protected activity.

If you look at the case law, and I won't go through all of the case law that was cited in the–in my motion and brief.

It's clear that even though someone maynot like what someone has to say or even–words–words that make someone upset are not necessarily criminalized. What you can, basically, what the State can do, the compelling State interest is to prohibit fighting words.

Here we don't have fighting words. There's no possibility of a riot. These are things that, given the allegations as the People have set–set them forth, this is constitutionally protected activity. Thee's no indication that there was any stalking, other than these words, and–and the statute, specifically, excepts constitutionally protected activity from–from the purview of the statute.

The second argument is, your Honor, that–that this statute, the stalking statute, either on its face or as applied to the defendant, is unconstitutional.

And I think the–the prosecutor is probably correct, in his response that this Court is not necessarily bound by the Federal

District Court in the Western District of Michigan. I'm not quite sure. I haven't–I'm taking, basically, his–his cases for granted. I just received that yesterday. But even–even though that's the case, I think the Court here can say, as to this conduct, either as applied to this defendant, that the statute violates the free speech clause and the due process clause of the Michigan and Federal Constitution.

That way, the Court is not having to throw out the statute as to everyone, but, clearly, this–this conduct was not, I believe was not what was intended by the legislature in enacting and prohibiting stalking.

So, there's a number of different ways. First, we're saying that the–that the conduct here that's alleged falls under the exception of harassment that is constitutionally protected activity or second, in the alternative, that this statute as applied to the defendant is unconstitutional.

Thirdly, of course, is the facial and validity argument which I think is the weaker of the three.

If I now may address the count I in file number 1289. I did provide–I did, specifically, address this in my brief. But after I did the brief, I came across a case, People v. Bashaw, and this is in regards to count number one, which is MCL 750.352, which Mr. Pouillon is being charged with molesting or disturbing workers.

I've provided a copy of that case to the Court and to Mr. Goetz. It's a Supreme Court case in 1940. There's not a whole lot of cases regarding this statute because I don't think it's been used that often.

But if you–if you turn to what's labeled as page eight, but it's actually page two of my copy, the Court of Appeals here, this is a situation where the defendant Bashaw was found guilty of the statute. He, basically, was in a similar situation with Mr. Pouillon. He was peacefully picketing, and I believe that that's what Mr. Pouillon was doing. Even though Mr. Pouillon was using words,

it's still a peaceful protect.

There's no violence. There's no threats or harm or physical harm done. But on page eight, the second column indicates that the Court of Appeals, in their ruling, said the trial court was not oblivious of the fact that there was considerable body of judicial opinion holding that peaceful picketing is not illegal. Former opinions of this Court were to the contrary.

There was no evidence of any threats, intimidation, or interference with the employees of Robb-Ott, Inc., unless the sign–the carrying of the sign constituted such threats and intimidation.

But it would not be said that an employee's fear that the result of picketing would be the loss of his job as the result–is the result of threats and intimidation within the meaning of those words as used in the statute, and it is only in this single aspect of the case and on the assumption that any kind of picketing was illegal, that the Court convicted the defendant.

Peaceful picketing does not come within the purview of this statute under which the defendant was prosecuted.

So, again, it's similar to the language that's in the statute–the stalking statute that, specifically, says that peaceful picketing or constitutionally protected activity is not within the purview of the statute. And that's–that's our argument on those–on those charges, your Honor.

We would ask, first of all, that the Court rule that the facts in the light most favorable to the prosecution, that this is not stalking, and it is not harassing or molesting workers because of the fact it's constitutionally protected activity. There needs to be more than jsut speech. Stalking, I think, if you look in terms of–in Mr. Goetz's response, he indicated that–if I may find that here.

I think on page eight of Mr. Goetz's response, he indicates in talking about overbreadth and vagueness, he indicates that the–at

the top of the page, second, the statute does not regulate pure speech, but, primarily, it regulates conduct.

The statutes which address pure speech are much more vulnerable to overbreadth challenges, and those are the sort of issue here. But I think here, the facts, if the–if the stalking statute does regulate nor just merely speech but conduct, and I think it is lacking here, there is no conduct, and we would ask that the matters be dismissed.

If the Court declines and denies our motion, we would ask the Court for some type of ruling on what's going to be presented to the jury as far as constitutionally protected activity.

If–the problem becomes, we would need to draft a jury instruction as to what that means if–if that's going to be submitted to the jury. Thank you.

THE COURT: Mr. McKay, isn't this Bashaw a Supreme Court case? We didn't have the Court of Appeals back then.

MR. MCKAY: I'm sorry. yes, it is. Did I say Court of Appeals? Yes, the Supreme Court.

THE COURT: Mr. Goetz?

MR. GOETZ: Thank you, your Honor. Just briefly, I'm going to touch on the Bashaw case, first. And I believe that that case is distinguishable in that the Bashaw case indicated peaceful protestings.

On page one, which is indicated as page seven in that case, if you look to the right hand paragraph, it indicates that there was no strike in progress. The defendant walked peacefully back and forth saying nothing to anyone, and in no way molesting other pedestrians.

I think that makes that case distinguishable from the one that we, currently have presented to us. I'm not going to belabor that which I've already indicated in my brief, your Honor.

I would just indicate that it is our position that it is not

constitutionally protected speech. We have repetitive actions of Mr. Pouillon appearing within sight of Young Olds where Lori Rowlison works.

Ms. Rowlison has indicated, and if I might take a section–a second to point out a part of the police report in her handwritten statement indicating that he does scream, which is contrary to what Mr. McKay has indicated that there's no amplification of his voice. If there was no amplification, how could he hear him across busy 21?

However, be that as it may, Ms. Rowlison indicates and will testify that he has indicated to her that, "Is that a bomb in there" Is that a baby or a bomb? Did you tell them about the bombs? Better watch out. God will drop a bomb on you." I would take that to mean, a threat, your Honor. That could be interpreted as a threat by Ms. Rowlison.

Mr. McKay is correct that there is a history with Mr. Pouillon, and I would indicate, or I would have the Court take into consideration that, perhaps, the arguments of free speech are a facade for actually stalking Ms. Rowlison.

There is a course of conduct appearing within sight, raising voice, the–the speech that he is indicating is not constitutionally protected. There is no legitimate purpose for saying "God's going to drop a bomb on you," and I would, certainly, like to hear the explanation of what legitimate purpose where is in Mr. Pouillon calling Ms. Rowlison, "a fat bitch." I don't think that that–that is constitutionally protected speech, your Honor.

Ms.–Ms.–or Ms. Rowlison was pregnant at the time. As far as the overbreadth and the void and constitutionally invalid on its face, Mr. McKay is asking this Court to do what the Michigan Court of Appeals has declined to do, and that–find the stalking law unconstitutional.

Your Honor, it is our position that Mr. Pouillon has been

harassing Ms. Rowlison. The testimony that's going to come out is that those comments that were made were directed, specifically, to Ms. Rowlison. The testimony would be that although Mr. Pouillon did not remember the name of Ms. Rowlison, he recognized the fact that she was in fact, the pregnant one. Not on one occasion, but on more than occasion (sic) when the police contacted him and got a statement from him.

The People would request that Mr. McKay's motion to have this matter dismissed be denied. Thank you.

As far as–as far as the conduct, and does it–is it unconstitutional as applied, I think those are fact questions. I think that the–the facts of what happened need to be presented to the jury. The–the facts of the case are that, excuse me, the elements, the law needs to be presented to the jury, and I–I agree with Mr. McKay that this may be a case that some very specific jury instruction as it related to your First Amendment right may be very appropriate.

But I don't think it's–it's–this is the point–this is the time to just be dismissing this based on some reading out of the police report.

As far as this count II or this–this harassing–this–excuse me, it's count I, I think the law is pretty clear, just simply picketing is not disturbing workers, and again, we're going to have to hear the facts, and this will be subject to a motion for a directed verdict, and so on, like any other case. But I'm not going to simply dismiss it based on the–the argument that–that it isn't–a peaceful protest is okay because that's the law. That clearly is okay.

I think the real question here is going to be after we hear the testimony and does–does is the conduct of the defendant, does it go beyond constitutionally protected activity?

Clearly, he has a right to protest. He has a right to picket. He's been doing it for years, and he can continue to do it for years. Maybe I see this too simplicitedly, but the question is has his

conduct gone beyond constitutionally protected activity, and does it rise to the level of a crime, the crime of stalking?

I don't know without hearing the testimony how–how we can–that can be determined today. The–the–I'm not going to dismiss it. I think what–Mr. McKay, I think what I would ask is if you and Mr. Goetz would both prepare any special jury instructions you have so that we can have those a little bit before trial because I–may guess is that will probably be a disagreement, too.

* * * *

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Young Oldsmobile Cadillac and Anthony M. Young, Plaintiff-Appellee, v. James Pouillon, Defendant-Appellant.

No. 190407

COURT OF APPEALS OF MICHIGAN

1997 Mich. App. LEXIS 2426

October 14, 1997, Decided

**NOTICE:** [*1] IN ACCORDANCE WITH THE MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

**JUDGES:** Before: Hood, P.J., and McDonald and Young, JJ.

**OPINION:** PER CURIAM.

Defendant appeals by leave granted pursuant to MCR 7.205(D) the preliminary injunctive order of the trial court preventing him from engaging in abortion protest activities outside plaintiffs' business. We vacate the trial court's order.

Defendant James Pouillon is an ardent anti-abortion protester who demonstrated on public property in front of plaintiffs' car dealership from the early fall of 1994 until February 1995. Defendant began his protest when plaintiffs posted signs at the dealership for certain local political candidates that defendant considered to be "pro-choice." Beginning in December 1994, defendant would, four to five times per week during plaintiffs' business hours, stand on the grassy strip abutting the highway in front of plaintiffs' car

showroom, display large signs containing various anti-abortion slogans and graphic photographs, and generally attempt to deliver his anti-abortion [*2] message to plaintiffs' customers and employees.

It is undisputed that many of defendant's comments bordered on the tasteless. On several occasions, defendant would directly target plaintiffs' black customers with comments such as, "Black baby killers, stay in Flint," or, "Pro choice people believe in killin' black babies," and "Jesus loves black babies." On one occasion, a black customer was so incensed by defendant's speech that he had to be physically restrained from approaching defendant.

Plaintiffs filed the instant action for slander, libel, trespass, tortious interference with contractual and business relations, stalking and nuisance in December 1994. Plaintiffs variously alleged that defendant's speech had offended several of their employees and customers and caused plaintiffs to lose business. Plaintiffs requested preliminary injunctive relief to prevent defendant from protesting outside the dealership on the weekend of December 16 through 18, because plaintiffs were planning on conducting a highly-publicized sale. Additionally, plaintiffs requested the trial court to grant them permanent injunctive relief to bring a halt to defendant's protests outside the dealership. [*3]

At the hearing on plaintiffs' motion for preliminary injunctive relief, plaintiffs generally claimed that defendant's protests had driven away several potential buyers from the dealership, although Anthony M. Young and other witnesses were unable to affix a dollar value to the amount of business that had been lost. Moreover, plaintiffs disclaimed having taken any stance on the abortion issue, and therefore believed that defendant had unfairly targeted them for criticism.

On March 30, 1995, the trial court entered the first

preliminary injunction in this case, which provided, in pertinent part:

> Defendant . . . is preliminarily enjoined from harassing, yelling at or in any way intimidating the owners, employees, visitors, customers, sales people or any other people thereto, at or in front of (including the highway right-of-way) [plaintiffs'] business . . . or from in any manner obstructing the advertising sign at said business location or from interfering with any business conducted at said location or from trespassing at said property, from using the names of any of plaintiffs or their employees in a libelous manner or displaying said names on any signs, messages or communications [*4] at or in front of the above described premises or locations.

This Court vacated the trial court's order granting plaintiffs' motion for preliminary injunctive relief, stating that the trial court's "injunction prevents or can be interpreted to prevent defendant's peaceful exercise of First Amendment rights on public property in the vicinity of plaintiffs' business and therefore burdens more speech than is necessary to serve a significant government interest." *Young Oldsmobile Cadillac, Inc v Pouillon*, unpublished order of the Court of Appeals, entered June 13, 1995 (Docket No. 185042). Plaintiffs filed a motion for immediate consideration and leave to appeal with the Supreme Court, which denied plaintiffs' motions in favor of further action by the trial court, subject to our review. See *Young Oldsmobile Cadillac, Inc v Pouillon*, 450 Mich 852; 538 NW2d 678 (1995).

Thereafter, the trial court held a hearing to ascertain the parties' positions on the subject of reworking its original order Plaintiffs posited that the trial court should, in light of *Madsen*

*v Women's Health Center, Inc*, 512 U.S. 753; 114 S Ct 2516; 129 L. Ed. 2d 593 (1994), [*5] a case that both parties and the trial court deemed applicable to the instant facts, fashion a thirty-six foot "buffer zone" around plaintiffs' dealership from which defendant would be excluded from protesting. Defendant advanced that the trial court's original order was vacated because it could not constitutionally prevent him from engaging in peaceful, if annoying, protest activities on the public right-of-way in front of plaintiffs' business, which included the grassy strip upon which defendant had been conducting his protests.

Again, the trial court granted plaintiffs' request for preliminary injunctive relief. The trial court's second order was more specific than its first order, going so far as to specify the message that defendant was forbidden to convey to plaintiffs' customers. The order provided, in pertinent part:

> Defendant . . . is preliminarily enjoined from standing or walking, or touching with any part of his body or any instrumentality plaintiffs' private property . . . . Plaintiffs' private property, for purposes of this injunction, is located on the south side of State Highway M-21 and includes the grassy strip maintained by plaintiffs and immediately bordering [*6] plaintiffs' showroom and paved car lot, which grassy strip defendant is to keep off during plaintiffs' normal business hours;
>
> IT IS FURTHER ORDERED that defendant is enjoined from in any way obstructing plaintiffs' business by yelling at or communicating with plaintiffs' customers on plaintiffs' premises words to the effect, "Go back to Flint" or "Don't buy a car here, they're baby killers", or "pro-choice";

> IT IS FURTHER ORDERED that this injunction shall not be interpreted or used to prevent defendant's peaceful exercise of his First Amendment rights on public property in the vicinity of plaintiffs' property.

Defendant appeals by leave granted the trial court's modified preliminary injunctive order.

We first address defendant's claim that the trial court erred in granting a preliminary injunction because plaintiffs failed to meet its burden of proof under MCR 3.310(A). We review the trial court's decision for an abuse of discretion. *Fruehauf Trailer Corp v Hagelthorn*, 208 Mich App 447, 449; 528 NW2d 778 (1995). Moreover, because this is an equity case, we give due deference to the trial court's findings of fact, and we will sustain [*7] those findings unless we are convinced that we would have reached a different result. *Id. Kern v City of Flint*, 125 Mich App 24, 27; 335 NW2d 708 (1983).

Preliminary injunctions are authorized under MCR 3.310. In determining whether a preliminary injunction should issue, there are four factors to consider:

> (1) the likelihood that the party seeking the injunction will prevail on the merits; (2) the danger that the party seeking the injunction will suffer irreparable injury if the injunction is not issued; (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief; and (4) the harm to the public interest if the injunction is issued. *Fruehauf Trailer Corp, supra* at 449.

The party seeking a preliminary injunction has the burden of

establishing that the relief should be granted. MCR 3.310(A)(4); *Campau v McGrath*, 185 Mich App 724, 727-728; 463 NW2d 486 (1990).

Having reviewed the record, we conclude that the trial court erred in granting preliminary injunctive relief. We agree with defendant [*8] that plaintiffs failed to establish that they would suffer irreparable harm in the absence of a preliminary injunction. Plaintiffs presented testimony suggesting that they had experienced and faced the threat of further loss of potential business as a result of defendant's activities. However, plaintiffs provided no evidence of any specific business earnings that had been or would be lost. In any event, economic injuries do not constitute irreparable harm because they can be remedied by damages at law. *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, Local 6000 v Michigan*, 194 Mich App 482, 507; 487 NW2d 494 (1992).

Plaintiffs have also failed to establish the likelihood of their success on the merits. We note that plaintiffs fail to even address their claims for slander, libel, trespass, stalking, and nuisance. In order to prove their claim of tortious interference with a contractual or business relationship, plaintiffs must, in part, establish "the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual [*9] rights or business relationship of another." *Feldman v Green*, 138 Mich App 360, 378; 360 NW2d 881 (1984). It is clear that a boycott, at least to the extent that it is supported by speeches and nonviolent picketing, is lawful activity entitled to constitutional protections. *NAACP v Claiborne Hardware Co*, 458 U.S. 886, 907; 102 S Ct 3409; 73 L. Ed. 2d 1215 (1982). This is so even if the purpose of the picketing is to induce customers not to patronize the business. *Id.* at 909. While plaintiffs maintain that some of defendant's activities (*e.g.*, use of fighting words)

remain unprotected, we do not believe that plaintiffs have shown that their claim for tortious business interference would succeed on the merits.

For the reasons stated above, we conclude that the trial court abused its discretion in granting the preliminary injunction. In light of this determination, we need not reach or address the constitutional issues presented. See *City of Detroit v Qualls*, 434 Mich 340, 358, n 31; 454 NW2d 374 (1990).

Vacated and remanded. We do not retain jurisdiction.

/s/ Harold Hood

/s/ Gary [*10] R. McDonald

/s/ Robert P. Young, Jr.